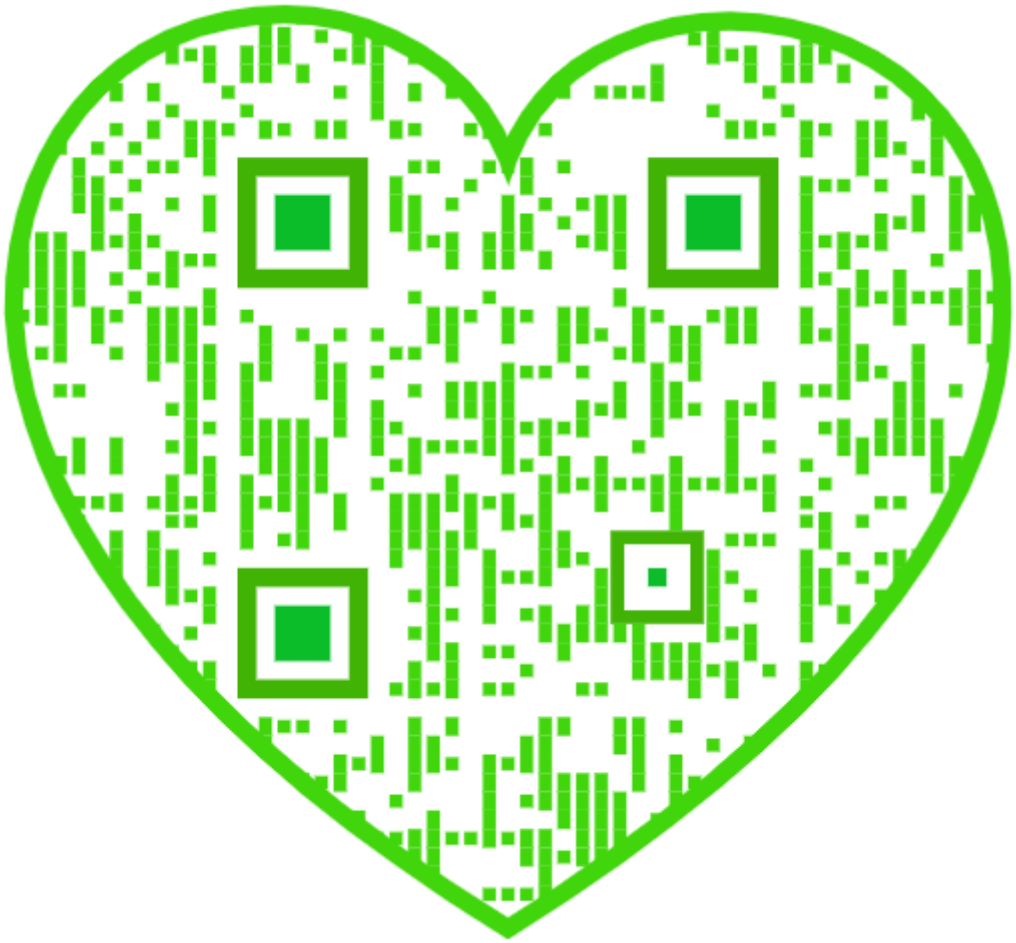

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GOVERNMENT IN STATE AND NATION

GOVERNMENT IN STATE AND NATION

BY

J. A. JAMES, PH.D.

PROFESSOR OF HISTORY IN NORTHWESTERN UNIVERSITY

AND

A. H. SANFORD, M.A.

PROFESSOR OF HISTORY AND GOVERNMENT, STATE NORMAL SCHOOL
LA CROSSE, WISCONSIN

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A

PREFACE

The subject-matter herewith presented partially represents the plan pursued by the authors as teachers of civil government for a number of years in secondary schools. A study of the actual methods by which the affairs of government are conducted gives constant interest to the work, and consequently the practical side has been emphasized. Many problems besides those presented in the supplementary questions may be worked out from the official reports.

Scarcely a month passes without the appearance in the more noted magazines of articles on phases of governmental activity which have permanent value. No attempt has been made to give references to all of this material which has appeared during the past ten years. The ability of the reader has been kept constantly in mind and the intention has been to refer only to such articles as would be of value to students in high schools, academies, and normal schools.

We are under especial obligation to teachers who have used the first edition of the book for their helpful suggestions on desirable modifications.

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SOME SUGGESTIONS TO TEACHERS

We trust the following observations may be of value to teachers in the use of this book, and at the same time answer certain questions which we are assured will arise.

1. There are but few questions given on the subject-matter of the text, for each teacher will doubtless prefer to present the topics in his own way. While some of the discussions and many of the suggestive questions are intended to make students realize more completely their duties as citizens, many more having a local bearing will occur to teachers. "Topical outlines" are omitted, for by the aid of the marginal topics students will be able to make outlines for themselves which will be of vastly greater interest and value.

2. All teachers may not care to use the parts of the book in the same order, and the arrangement is such that either Local (Part I) or National Government (Part II) may be studied first. In the work on local government, it is not expected that the student will *learn* all of the different practices found in the various States, but that he will compare them with those of his own State.

3. There are more supplementary questions and references, doubtless, than can be used by any one class, but this will give the teacher an opportunity for selection. A number of the references may be used each day by assigning special problems to individual students.

4. It is scarcely to be hoped that all the books and magazines mentioned will be found in any high-school library, but the need for supplementary reading is being met

through the rapid increase of public libraries. Great care has been taken in selecting the books which are given in Appendix C, and by adding a few of these each year a working library on the subject of Civics may soon be secured. Many of the reports issued by the government may be readily obtained by applying to your Congressman or to the government officials.

5. Some teachers may have difficulty in securing the periodical literature. In nearly every village there are persons who have subscribed for these magazines for a number of years and would be willing to present them to the school library.

INTRODUCTORY CHAPTER

NEED OF GOVERNMENT

The control of our actions by some kind of government precedes our earliest recollections; this we have constantly experienced in the family and in school. Wherever men live in communities they are under political government; their relations with one another must be regulated by well-understood rules in order that they may live and conduct business in security. By means of political government, also, communities find it convenient to increase the comforts of life, as in the building of good roads and streets; they furnish themselves with the means of education and culture through schools and libraries. For such purposes the government of town, village, and city is of the first importance. But business and political relations exist among communities, as well as among individuals. Consequently, our local governments must be supplemented by organizations that cover larger areas and include many communities; therefore the county and State governments are formed. For the same reasons, and also for reasons of which we learn in the study of United States history, a government for the United States became a necessity at the very beginning of our National life.

In these various political organizations the plan of government is the same. In the first place, there is always the law-making body, prescribing the regulations to which men must subject themselves if they are to live together in harmony. Again, because laws do not enforce themselves,

officers are selected to see that these provisions are carried out. Finally, since men frequently disagree as to the meaning of laws, and because there are always those who wilfully violate them in order to secure some personal advantage, courts are established in which the laws are interpreted and offenders are judged. We have, then, the three departments of government—legislative, executive, and judicial.

The system of local government to which you are accustomed did not grow up spontaneously, nor was it established arbitrarily. There are reasons to be found in history and in the nature of the environment which explain many of its details. The same may be said of our State and National systems. In consequence, we shall find it advantageous to trace briefly some historical origins of government in our country. Again, it is evident that no system of human government is perfect. In every community the defects of laws and their non-enforcement are familiar topics of discussion, while the failures of State and National governments at certain points are no less conspicuous. These are the problems to which our attention will be directed in the course of our study.

For the most part, however, it will be our task to study *government as it now exists* in town and city, State and Nation. We shall look backward into history only when this is necessary for the understanding of our present forms and practices. We shall look forward to the solution of a few of the simpler problems that now confront us. A study of the deeper origins and of the more profound problems must be postponed to the years of advanced work in college.

PART I

LOCAL GOVERNMENT

CHAPTER I

TOWN AND COUNTY GOVERNMENT

The origin of our local governments.

When, in the seventeenth century, Englishmen made settlements along the Atlantic coast, some form of local government became an immediate necessity. They adopted consequently the political usages to which they had been accustomed at home, selecting those offices and forms of procedure that seemed best adapted to their needs and surroundings. Because natural conditions and the ideas of the settlers varied considerably in the different colonies, we find several varieties of local government growing up. But since these local governments were all established by Englishmen, and, moreover, by Englishmen of very similar habits and social grades, we find, on the whole, great similarity in their fundamental features.

New England conditions.

The most marked differences are seen in a comparison of local governments in New England and in Virginia. The settlers of New England found themselves upon a coast indented by many bays and harbors; the country was hilly and the soil stony; streams were abundant but generally small, rapid, and unfit for navigation; the sea abounded in fish and the forests yielded excellent timber. These physical conditions hindered the rapid spread of population over large areas and offered many inducements

for the gathering of the inhabitants into towns. Moreover, this tendency was in accord with the wishes of the Puritans. They desired, above everything, to foster the religious life of the little church communities into which they grouped themselves. They believed that all settlers should take an active part in worship and in the government of the church, and that consequently all should live within a short distance of the meeting-house.

The town type: meetings, officers, and functions.

Under these circumstances the New Englanders put into practice those features of the ancient English township government that were best suited for governing their little towns. Once a year, or oftener, the voters assembled in town meeting to elect officers and to engage in general discussion of town affairs. Here taxes were levied, and the support of the poor, the maintenance of highways, church, and school were provided for. The officers of the town were the selectmen, a board having general oversight of town affairs, the treasurer, clerk, constables, school committee, assessors, fence-viewers, and frequently many others. The remarkable features of New England town government were the freedom with which all matters of public interest were discussed in the town meeting, and the care with which all affairs of government were guarded by officers and people alike. Early in the history of the Massachusetts Bay Colony towns were grouped into counties, and justices were appointed who held court in the towns of each county. Scarcely any but judicial matters were intrusted to the county government. The centre of political life in New England was the town, hence we have here the town or township type of local government.

Origin of Virginia local government.

A very different type of local government was developed in Virginia. If we contrast the physical geography of this section with that of New England we see how every inducement favored the scattering of population and the development of great plantations. The influence of tobacco

cultivation and of slavery was in the same direction. Since the desire for individual gain prompted most of the settlers, there were no strong ties tending to bind the people into compact communities. There were scarcely any towns in Virginia. Consequently the settlers were driven to select those features of English local government that were best adapted to their sparse settlements.

The vestry.

The local organization corresponding to the town of New England was the parish. The vestry, a group of officers originally elected by the members of a church, was given control of matters relating to the church and the poor.

The county court.

Other functions of local government were placed in the hands of the county court, a body composed of justices originally appointed by the governor of the colony. The county court administered justice, but it also had important legislative functions, for it levied taxes for county purposes, maintained highways, and exercised general control over such affairs of local government as were not in charge of the vestry. Its authority extended over the county, which was sometimes divided into two or more parishes.

The county type.

The other important county officers were the sheriff (who, besides being a court official, was county treasurer) and the lieutenant, or commander of the militia. The original method of appointment in both vestry and county court was changed so that members came to be chosen in each case by the body itself.

Contrasts between the two types.

We may note three points of contrast between the two systems of local government described above. (1) The principal functions of government (taxation, education, care of roads, public safety, etc.) were exercised in New England by the towns, and in Virginia by the counties. (2) In Virginia the conduct of local government was in the hands of a limited body of prominent men, while in New England the mass of voters participated more freely. (3) In New England the deputies sent to the colonial as-

sembly were selected from the towns, while the members of the Virginia assembly (the House of Burgesses) were sent from the counties.

The result of these differences.

The New England type of local government gave the people much practical political education, while that of Virginia developed a class of intelligent, public-spirited leaders. These facts are of great consequence in colonial history, especially in that period when resistance to the English Government made Massachusetts and Virginia leaders in the Revolution.

The township-county type: location and division of powers.

The middle Atlantic colonies present a medium in climate, soil, and physical structure between the extremes of New England and Virginia. This is also true of the methods of settlement and the occupations of the people. Similarly, the type of local government developed in these colonies seems to be a compromise between the two types that we have been considering. It has been called the mixed or township-county system of local government. Like New England, the middle colonies had both townships and counties, but there was a much more equal division of powers between these units. At the same time, the county was not so important as in Virginia. In New York the township was more prominent than the county, while in Pennsylvania county officers performed the most important functions.

The colonial systems above described have been much modified. In New England it has been found convenient to enlarge the functions of the county and to diminish those of the town. In Virginia and throughout the South the township has become an increasingly important organization. Still, in each of these sections the system of local government now in use bears the stamp of its origin.

The origin of local government in the West.

In the Western States, the character of local government has been greatly influenced by the origin of the settlers. The general trend of population, as it moved westward

from the thirteen original States, was along parallels of latitude. Consequently, in the South we find the county type prevailing. Nowhere, however, does the pure town type exist, for the Northern States all have the mixed system. These States may be divided into two groups according as the town or the county is given more extensive functions. The States in the first group (Michigan, Illinois, and Wisconsin) have been influenced by the examples of New England and New York. In these States there is the annual town meeting of voters, where officers are elected and matters of town government are discussed. We have here the form of a pure democracy. A town board has general charge of town affairs. This group of States is also distinguished by the nature of their county boards, which are composed of supervisors elected in the various towns, villages, and wards. This supervisor system of county government originated in New York, in colonial times.

The supervisor form.

In the second group (Ohio, Indiana, Kansas, Missouri, Nebraska, Colorado, Oregon, and California) the county is of more importance in local government. There is no town meeting. A town supervisor (or board of supervisors or trustees) exercises some powers that would be exercised by the town meetings in other States. But here the county board exercises more of such functions; it has extensive powers over the poor, health, highways, taxation, etc. Unlike the county board in the other group of States, it is composed of members elected at large* or from districts of the county. They are few in number and are called commissioners.

The commissioner form.

In all the Northern States there is a group of other town officers besides the supervisors—clerk, treasurer, assessor, constables, and various minor officers and boards. The

* That is, each voter of the county may vote for the entire number of commissioners that are to be elected at any election.

county is the basis of court organization; so there is a judge, a sheriff, and a clerk of the court. Frequently we find several counties grouped into a district or circuit throughout which a single judge holds court sessions.

In some cases taxes are collected by the sheriff, but generally there is a county treasurer. Other county officers, most of whom are elected by the voters, are the superintendent of schools, the register of deeds, or recorder, the surveyor, and the coroner.

Villages. As population becomes dense in certain localities, villages and cities are organized. Village government is sometimes entirely distinct from town government; sometimes it is united with the latter for general purposes, though sustaining its own officers for special purposes. In either case the governing body is a board with an executive head, generally called the president.*

Cities. Cities have governments similar in general plan to those of villages; but there are more officers and their functions are more extensive. The conditions of city life give rise to new problems of government to which we shall give attention in a separate chapter.

Such, in bare outline, is the organization of local government in the States to-day. In the actual processes by which local government is carried on, towns, villages, and cities (or divisions of cities called wards) are regarded as divisions of the county. Counties are themselves divisions of the State. Now, there are some activities of government in which the local units alone are concerned, as in the maintenance of roads, streets, and bridges, and the care of the poor. But in many important matters the processes merely begin in the local units and are completed by the action of State officials. For example, taxation and election proc-

* Various terms are in use. In Pennsylvania there is the borough with a burgess at its head. In Virginia the corresponding organization is the town, with a mayor as executive officer.

esses involve both local and State governments. The same is true, in many cases, of the administration of justice and the maintenance of school systems. Hence, it will be necessary to take a general view of State government before considering how these operations are carried on.

Supplementary Questions and References

1. The history of local government in the colonies: James and Sanford, American History, 92–98; Thwaites, The Colonies, 55–58; Fisher, The Colonial Era, 60, 99, 167; Channing, The United States of America, 37-38; Wilson, The State, 449–458; Lodge, A Short History of the English Colonies, 48–59, 58–59, 414–417; Hart, Formation of the Union, 11–13; Bryce, American Commonwealth, 589–593; Bancroft, History of the United States, I, 285–286, 449.

2. For descriptions of local systems as they are at present, see Bryce, I, chapters 48 and 49; Wilson, The State, 524–538; Beard, American Government and Politics, 638–655.

3. Make a study of a town: (1) With a map, as to its location, size and shape.* Compare with other towns in the same county. (2) What officers has the town? For what terms are they elected? How are they paid? What general duties does each have? Is the town board a legislative or an executive body? (3) Is there a town meeting? If so, what business does it transact? Did you ever attend one?

4. Study the organization of a village government. In what respects does it differ from the town government? Why?

5. What is the area and population of the county in which you live? What is the county seat? Have you visited the county buildings? Who has charge of them?

6. How many townships are there in your county? Estimate the total number of local officers. How many counties are there in your State? Are they generally regular or irregular in shape? Compare counties of other States. (See Atlas.)

* In the West, the Congressional township, as determined by the United States Land Survey, frequently determines the boundaries of the town. See. pp. 280–282.

7. Make a list of your county officers, the length of term and salary of each. What are the principal duties of each?

8. Is the county board elected on the commisssioner plan or the supervisor plan?

9. To which type of local government does the system of your State most nearly conform? Account for its origin.

CHAPTER II

STATE GOVERNMENTS

The general plan of colonial governments.

As town and county governments in the thirteen colonies were modelled upon ideas and practices derived from England, so the central government of each colony took form upon the plan of England's central government. And this plan may be seen to-day in the governments of our States and in that of the United States: all have the division into three departments—legislative, executive, and judicial—the legislature generally being composed of two branches. There were many variations among the colonies in the details of government, but at the time of the Revolution there was one important point of likeness: viz., each had an elective representative assembly. Moreover, it had become established in practice that the assembly should legislate upon matters affecting the internal welfare of the colony, and especially that it should exercise the vital function of levying taxes. Thus was erected in each colony the form of a free government, while the habit of self-government became established through the neglect of England to interfere seriously with the powers exercised by the colonial assemblies.

Classification of colonies.

We may further analyze colonial governments by classifying them upon the basis of the method by which the governor obtained his office. There were three forms: Republican, the people electing the governor (Connecticut and Rhode Island); Proprietary, the governor appointed by the proprietor (Maryland, Pennsylvania, and Delaware); Royal, the king appointing the governor (the eight remaining colonies).

How State constitutions came about.

The Revolution transformed the colonies into States, the new State governments being formed in 1776 and the next few years.* One of the first steps in this process was the formation of written constitutions. It was natural that these should be framed in the new States, because the colonial assemblies and officers had become accustomed to exercising their powers under the superior authority of their charters. So in each State a written constitution seemed necessary as a fundamental law, outlining the framework of State government. The constitution of a State, then, is its supreme law, so far as purely State authority is concerned. All laws must conform to its provisions; all officers take oaths to support it. It is the duty of the State judiciary to see that official acts stand in conformity with it.

Origin of State constitutions.

The States admitted into the Union after the adoption of the Federal Constitution (1789) used that instrument as a model to some extent. But still greater was the influence of the old State constitutions upon the settlers from the East who were so rapidly building the new commonwealths of the West. So, while the constitutions of all the present States show, by their great similarity, their common origin, there are variations that may be traced backward along lines of westward migration to their sources in the original States.

Constitutional conventions.

State constitutions have generally been made in State conventions composed of delegates chosen for that purpose. In some States new constitutions have been made in this way to supersede old ones. When an entirely new constitution has not been considered necessary, amendments have been adopted; these have been framed either by the State legislature or by a State convention. In most cases, whether in the adoption of a constitution or of an amendment, a vote of the people is an important step in the process.† So it may be said that State constitutions proceed from the people.

* James and Sanford, American History, 157, 158. Connecticut and Rhode Island continued their charters in force as constitutions.

† This was not the case in the adoption of their constitutions by the thirteen original States (except Massachusetts); nor in the adoption of new constitutions by South Carolina, Mississippi, and Louisiana.

Analysis of State constitutions.

The contents of State constitutions may be grouped under three heads. (1) The Bill of Rights, which is patterned after the earliest State constitutions and the first eight amendments to the Federal Constitution. By these provisions the fundamental civil rights of citizens are secured, such as the right of free petition and assemblage, fair trial by jury, exemption from unjust searches and seizures, freedom of religious worship, and freedom of speech and of the press. (2) The outline of the frame of government, showing the organization of the legislative, executive, and judicial departments, with general provisions as to their powers and the manner in which they are to be exercised. (3) Miscellaneous provisions. In recent years there is a marked tendency to increase the number of subjects treated in the State constitutions and to make more detailed regulations. Some new constitutions are of much greater length than the old ones, and are really general laws rather than mere frames of government. The purpose of these provisions is to limit the powers of the State legislatures.

Legislative powers.

State constitutions confer all the law-making powers upon the legislatures. These bodies do not attempt to exercise all such powers, but delegate local authority to other legislative bodies in school districts, villages, towns, cities, and counties. The county board and the city council, for example, are legislative bodies, but they derive all their powers from general or special laws framed by the State legislature.

Organization of State legislatures.

State legislatures are invariably composed of two houses —the Senate and the House of Representatives or Assembly. The first of these houses has a smaller number of members than the second; the members have longer terms than in the lower house, and the qualifications for membership may be higher. Members of the legislature are chosen from districts, and the redistricting of a State

is made necessary at stated times by the shifting of population. This is done by an apportionment act. An especially unfair apportionment is called a "gerrymander" (see pp. 134–135).

The committee system.

In all but a few States the sessions of the legislature are biennial. Methods of procedure are quite similar in all legislatures. A proposed law is called a bill. When a bill is introduced in either house, the presiding officer (usually called the Speaker in the lower house, and the President in the upper) refers it to a committee. Standing committees are appointed in both houses, to each of which bills upon a certain subject are referred. This arrangement facilitates business and gives opportunity for more full consideration of the bills.

How laws are enacted.

A committee has almost absolute power over the bills in its charge—to amend them, to substitute new bills in their places, or to keep them. They may take testimony and hear arguments upon the bills. When they report back a bill to the house, they recommend either its passage or its defeat, and usually the house follows the recommendation. Only a few of the important bills are fully debated in either house. After passing one house a bill is taken to the other, where reference to a committee and other procedure follows as in the first house. A bill that passes both houses goes to the governor for his signature, when it becomes a law. He may, however, veto the bill; then it must pass each house again by a larger majority (usually two-thirds) if it is to be enacted into law.

Restrictions upon legislatures.

No State constitution attempts to give a list of the powers of the State legislature, but there is always a list of limitations upon its authority and upon the privileges of its members. These restrictions may be grouped under several heads. (1) They may limit the length of sessions and the method of paying members. (2) Special, local, and private legislation are prohibited upon certain

subjects (such as city and corporation charters) and carefully guarded upon others. (3) All financial legislation, such as taxation, and the borrowing and appropriation of money, must be enacted under close limitations.

The legislative lobby.

Besides the restrictions upon legislatures mentioned above, many other constitutional provisions and laws have been enacted having the same effect. (1) The practice of lobbying has been placed under strict control. Persons who attend sessions of a legislative body for the purpose of using influence looking toward the passage or defeat of certain bills are called lobbyists. Many good measures are made possible in this way; but most of the bad measures are the result of successful lobbying.

Corporate influence in government.

It is in this way that the agents of corporations and "special interests" have at times worked their will in legislatures. Especially when campaign contributions have been made by these business interests (see pp. 51–52) they have demanded favorable legislation as a reward. Members of legislatures have been tempted by bribes or threatened with ruin. So privileges have been voted that were worth millions of dollars, to the entire neglect of public welfare. At times legislators have introduced bills that threatened to injure the business of a corporation, for the purpose of securing from it payment for defeating these very bills. This is called *blackmail.* Corporate influence in government is a power "for which our language contains no name. We know what aristocracy, autocracy, and democracy are; but we have no word to express government by moneyed corporations."

(2) Other laws provide the severest penalties for bribery and blackmail in connection with the passage of laws. (3) In some States the giving of passes by railroads has been prohibited, as tending to influence legislation.

What is popular government?

The enactment of the laws mentioned above indicates an increasing lack of confidence in legislatures. The people cannot entirely shift the blame for this condition upon their representatives, since, through elections, they can

themselves determine the character of their law-makers. We are accustomed to speak of our system as government "by the people"; but it is only in town and school-district meetings that all the voters assemble and legislate directly; and even these meetings do not exist in all sections of the country. Generally, therefore, law-making is a function of representative bodies, which are the village and county boards, city councils, State legislatures, and the National Congress. Hence we have not a pure, but a representative democracy, or a republic. This will be "government by the people" only if our representatives reflect accurately the opinions of a majority of the people.

Representative government.

The Referendum.

One way of testing this question is through the "Referendum." This consists of the requirement that when a certain number of citizens petition for it, a law must be submitted to the people for ratification or rejection. The idea of the referendum is in use in local governments when the people vote upon such questions as the issuing of bonds, the licensing of saloons, or the adoption of municipal ownership. But there is now a demand for its use with reference to any law passed by a legislature, upon the plan stated above.

The Initiative.

Another device intended to make legislatures represent the people more accurately is the "Initiative." If a certain per cent. of the total number of voters petition for a law, it must be considered by the legislature ; or, it may be placed before the people for acceptance or rejection, without the intervention of the legislature. The adoption of the initiative and referendum brings about "direct legislation" in the matters to which they refer.

Proportional representation.

By "Proportional Representation" is meant the distribution of the members in a legislative body among the political parties in the same proportions as the voters are distributed. Frequently, one party has a number of repre-

sentatives that is entirely out of proportion to its voting strength. This is because we elect representatives from districts. If the voters of two parties are quite evenly distributed throughout a State, one party may have a majority in so many districts that the voters of the other party will not be adequately represented. Numerous devices have been proposed to correct this matter, but none is in general use.

The wide scope of State laws.

It is interesting to think of forty-eight State legislatures at work simultaneously upon the same general problems of public welfare. Their laws touch the interests of the people most directly; for we come into contact with the laws of the National government, passed by Congress, in comparatively few ways. But the most important business and social relations of life—buying and selling, holding, leasing, and inheriting property; the domestic relations of husband and wife, parent and child; the regulations necessary to make the people secure in health and comfort—all these fall within the sphere of State government. "Space would fail in which to enumerate the particular items of this vast range of power. To detail its parts would be to catalogue all social and business relationships, to set forth all the foundations of law and order."

Diversity and uniformity of laws.

Now, there are two aspects in which we may regard this mass of State laws. (1) Each State may fit its laws to peculiar local conditions. This is one of the admirable features of our system of government. (2) But too much diversity is an evil. There are some subjects upon which greater uniformity is desirable, especially in matters of business law. This is because an increasing number of business men and corporations have interests in more than one State. Numerous State legislatures have enacted uniform codes covering certain branches of commercial law.

Supplementary Questions and References

1. James and Sanford, American History. Origin of the Assembly in Virginia, 45; in Maryland, 47–48; in Plymouth, 53; in Massachusetts, 56–58; in Connecticut, 61–62; in Carolinas, 78; in Pennsylvania, 81. General discussion of colonial governments, 133–134; 136–138.

2. For fuller information concerning colonial governments, see Fisher, Colonial Era, 208–211; Sloane, French War and Revolution, 10–12; Thwaites, Colonies, 58–63, 192–193, 271–277; Hart, Formation of the Union, 5–10, 13–17, 80–81; Fiske, Critical Period, 65–69; Channing, United States of America, 26–36, 84–85; Wilson, The State, 458–469.

3. Did colonial governors have the veto power? Hart, 9. What was the governor's power over sessions of the colonial legislature? Thwaites, 59. What were the relations of colonial legislatures to royal governors? Fisher, 209–210.

4. Were any State constitutions formed before July 4, 1776? Channing, 84–85. How long did Connecticut and Rhode Island keep their charters as constitutions? Why was this? Channing, 36.

5. What is the history of the framing of your State constitution? Were the framers influenced by the example of another State? Compare the Declaration of Rights with Amendments I–VIII of the U. S. Constitution. Why should these provisions be included in both State and National constitutions?

6. From your State constitution and legislative manual get facts concerning the State legislature—its composition, sessions, officers, etc. Why have two houses in the legislature? Do you think members of the legislature should be required to live in the districts they represent?

7. What are the rules governing apportionments in your State? Was the last apportionment fairly made?

8. What is the process by which laws are enacted? Can you give reasons for the existence of the committee system?

9. In what ways does the constitution place limitations upon the State legislature? Give reasons for each of these limitations.

Do they indicate popular distrust of the legislators? If so, for what reasons? Who is responsible for this condition?

10. For general discussions of State constitutions and governments see Bryce, I, chapters 36, 37, 38, 40; Beard, American Government and Politics, 445–452.

11. State legislatures are discussed in Bryce, I, chapter 40; Beard, chapter 25; Atl. Mo., 94 : 728–739.

12. Direct Legislation, the Initiative and Referendum, Wilson, The State, 310–312, 326–327, 488–490; Bryce, I, chapter 39; Beard, 461–469; Arena, 35 : 507–511; 36 : 52–54 600–603; 38 : 288–295; 39 : 131–141; Atl. Mo., 97 : 792–796; Indept., 57 : 1277–1278; 64 : 1191–1195.

13. Popular Government in Oregon, N. Am. Rev., 184 : 69–74; Indept., 68 : 1374–1378.

14. The Corruption of Government by Corporations, Arena, 30 : 55–68; Bribery, Its Cause and Cure, Indept., 55 : 829–832

15. The Belgian System of Proportional Representation, Arena, 50 : 591–597.

16. A Lobbyist for the People, World's Work, 15 : 9599–9601; Corporations and the Public, Outlook, 85 : 71–77; Justice to Corporations, *ibid.*, 88 : 118–120; Punishing Corporations, *ibid.*, 88 : 862–867.

CHAPTER III

STATE GOVERNMENTS (*Continued*)

Executive department of the State.

We have seen (p. 9) that the powers of State governments fall under three great departments—legislative, executive, and judicial. In the preceding chapter the legislative function was discussed. The execution of the laws of a State is vested in (1) local officers; these, besides executing the laws of towns and cities, also carry out the provisions of general State laws upon such subjects as elections, taxation, and the trial of cases in courts. (2) There are also State executive officers—the governor, secretary of state, attorney-general, treasurer, and numerous others. Besides these, there are often boards and commissions. In most States there is a lieutenant-governor who is the presiding officer of the State Senate, but who otherwise has few duties to perform. Like the governor, he is elected by the people for a term varying in length from one to four years.

Duties of the governor.

The powers and duties of the governor may be stated under several heads. (1) He reports to the legislature upon the condition of the State, and recommends legislation. (2) He has power to convene the legislature in special session. (3) In nearly all States a bill must have his signature before it becomes a law. He may delay or defeat its passage by his veto. (4) The power of pardoning, or of lessening the punishment of criminals, is generally vested in the governor. In a few States pardon boards have been created, either possessing this power or sharing it with the governor. (5) He appoints some minor State officers and frequently the members of boards

and commissions. Confirmation by the Senate is sometimes required in these appointments. The governor himself is often a member *ex-officio* (that is, by virtue of his office) of these boards.

Executing the laws.

Besides these specific duties, constitutions require the governor to see that the laws are faithfully executed. Under this power the governor supervises the work of such State officers as are subordinate to him; and he has power also to punish by removal some of the local officers, such as mayors and sheriffs, when he considers that they have not performed their duties. If, however, the authorities of any locality are unable, because of riot or other public disorder, to carry on the ordinary operations of government, they may appeal to the governor to assist them in the execution of law. This he does by means of the State militia, of which he is commander-in-chief. The presence of a military force may enable the civil officers to restore order, or the commanding officers of the militia may temporarily supersede the civil authorities.

The militia.

Administrative officers.

In some States the number of State executive officers, besides the governor and lieutenant-governor, is so large that these, with the various boards and commissions, are grouped together into the *administrative* department. The secretary of state keeps public records, including official acts of the governor and acts of the legislature. The State treasurer keeps the money of the State. The attorney-general gives legal advice to State officers, and is lawyer for the State in certain cases. The superintendent of schools, or board of education, administers State laws regulating schools, teachers, and school money. The auditor or comptroller has duties in connection with State finances. No money can be paid out of the treasury without his order.

Other officers or boards control the charitable and penal institutions of the State, and supervise the execu-

Boards and commissions.

tion of the law upon certain subjects, such as health, railroads, labor, insurance companies, agriculture, mines, public works. It is customary, also, to have boards of examiners who issue certificates to persons competent to practise medicine, law, pharmacy, or dentistry. Diplomas of graduation from professional schools of good reputation are accepted as equivalent to these certificates.

How the public welfare is guarded.

The protection and welfare of citizens depend in no slight degree upon the administration of law by these officers. By their action, abuses in a county jail or poorhouse may be corrected; an unsound insurance company may be compelled to withdraw from the State; factory hands may secure safe and comfortable rooms in which to work; a contagious disease may be checked; local officers may be compelled to furnish better school facilities or teachers. Even the pleasure of citizens is frequently provided for through fish commissioners, who plant fish in the rivers, and park boards, who preserve forests and streams from injury.

We have now seen that law-making in the State is primarily a function of the legislature, and that much authority to legislate upon local affairs is given to town, village, and county boards and to city councils. We have seen also that these laws are enforced by local officers and by the State officers whose duties have just been discussed. The third department of State and local government is the judiciary. In each State of the Union there is a complete system of courts for interpreting and applying local and State laws.

At the head of the judicial system there is a supreme court, or court of appeals, to which cases may be taken from lower courts for final decision. The highest court is usually composed of several judges, and its jurisdiction covers the entire State. It may either confirm or reverse the decisions of lower courts, or it may order a new trial of a case. At the bottom of the judicial system there

Judicial systems of the States.

are justice courts for hearing cases of minor importance arising in the town, village, or city. Justices of the peace preside over these courts.* Between the highest and the lowest courts there is always one and sometimes there are two or three grades of courts. Each is given jurisdiction within a certain district and over a certain class of cases. Each possesses, in addition, the right to review and control the proceedings and processes of lower courts. Frequently probate business, the settlement of the estates of deceased persons and related matters, is given to a separate court called the probate court.† In large cities a distinct series of courts becomes necessary.

Popular election and short terms of judges.

Important changes have come about since the establishment of the older State governments in the appointment and tenure of judicial officers. At that time judges were appointed by governors or elected by legislatures, and their terms were for life or during good behavior. With few exceptions judges are now elected by the people for comparatively short terms. Many writers condemn this change, claiming that it has resulted in lowering the standard of ability and integrity among judges. It is said that popular elections make it possible for men of strong political following, not necessarily the ablest and most upright, to secure places upon the bench. Others claim that appointment of judges and life tenure are undemocratic; that the present methods are necessary to secure complete popular government. The judicial, no less than the other branches of government, it is said, should be brought, through elections, into frequent contact with the popular will.

Frequent elections.

Some general facts concerning State and local officers are worthy of brief notice. Popular election, rather than appointment, is the rule in local units and for the most

* In cities the terms "police courts" and "police justices" are used.

† In New York this is the Surrogate's Court.

important State offices. Hence we have frequent elections and a corresponding opportunity for popular interest in and control of local affairs.

Two classes of officers.

The number of State and local officers elected in this country is much larger than elsewhere. These officers may be classified under two heads: (1) Those whose duty it is to determine the *policy* of government; that is, to decide what is wise and beneficial for the public. Such officers are governors, mayors, members of legislative bodies, and judges. (2) There are many officers whose duties are quite exactly prescribed by law and who do not, therefore, exercise much or any discretion in the performance of them. Examples under this head are secretaries, clerks, registers, treasurers, surveyors, auditors, attorneys for governments, engineers, and police officers. It is contended that only the first group of officers should be elected; that those of the second group should be appointed by the others and held responsible to them.

The short ballot.

The adoption of this idea would bring about the "short ballot" reform which is urged by the following arguments: 1. Many of the minor officers now elected do not deserve, and as a matter of fact do not receive, public attention. 2. So large a number of candidates in an election confuses the voter, who cannot become acquainted with them. 3. These minor officers are not subordinate to the more important ones, as they would be if appointed, hence their acts are not under strict supervision. When it is urged that the "short ballot" is undemocratic it is replied that a democratic government is one that is responsive to popular control, regardless of the number of officers elected and appointed respectively.*

All important officers are required to take oath (or affirmation) to "support the Constitution of the United

*See also p. 37. The only officers of the United States government who are elected are President, Vice-President, and members of Congress. "The long ballot with its variegated list of trivial offices is to be seen nowhere but in the United States. The English ballot never covers more than three offices, usually only one. In Canada the ballot is less commonly limited to a single office, but the number is never large."

States and the constitution of the State of ———— and faithfully to discharge the duties of the office of ————." Officers who have considerable responsibility, and especially those in whose custody money is placed, are required to furnish bonds for the faithful performance of their duties. Compensation of officers is either by salary, by fees, or by a combination of both. The removal of State officers during their terms is generally by process of impeachment. Appointed officers may be removed by the power appointing them, and in some cases local officers may be removed by the governor or by some other State or local officer.

Oaths, bonds, and salaries.

As we study the chapters that follow, it will be well to remember that the source of authority in local government is the State. The machinery of town, village, city, and county governments is created by State law, which endows them with all the powers they possess. At present there is a tendency toward the extension of State authority into local affairs by way of inspection and supervision, and even by complete State control. Matters formerly left to local governments entirely are being put under State regulation, either partially or completely. We shall find this true in the stricter supervision of public health by State officials; also in the control, now given to State boards and officers, over penal and charitable institutions. It is thought by some that State authority might be extended with advantage to the building of roads and the thorough supervision of school systems. The advantages of State control are these: the most capable officers can be secured; the methods employed may be uniform throughout the State; and the best methods can be extended to every section more rapidly than is possible when each local unit has the duty of investigating and adopting new methods for itself.

The State creates and regulates local powers.

Should State functions be extended?

But centralization of power meets strong opposition

The benefit of local self-government.

in most communities; for the exercise of local powers by local authorities is a fundamental principle deeply planted in the minds of American citizens. From this stand-point it is urged that the conduct of local government should be placed in the hands of officers who are directly responsible to the people most concerned. There results a degree of interest and of participation in local government that brings to the people much valuable education in politics. This problem—the right distribution of powers between State and local governments—is one that deserves attention from citizens who expect to participate in the governmental operations next described.

Supplementary Questions and References.

1. Write in parallel columns the titles, names, terms, and salaries of the executive and administrative officers of your State. Make a list of the executive boards and commissions. Indicate whether these officers are elected or appointed.

2. Is the pardoning power wisely used in your State? Has the governor had occasion to call out the State militia? Why should the governor have the veto power?

3. The workings of the executive department in all its branches may be studied from the reports of officers that are printed by the State.

4. Are there in your State societies, semi-official in character, that receive financial aid from the State? What is the purpose for which each society is organized?

5. Outline the judicial system of your State, giving the names of the courts, the composition, sessions, and jurisdiction of each. What are the terms and salaries of the judges? What are the names of the judicial officers in whom you are most interested?

6. Do you favor appointment or election of judges? Short terms or life tenure? See Bryce, I, 504–511.

7. Is there a chancery court in your State? What matters

do chancery courts consider? What is included under the term "probate business"?

8. Obtain blank forms for official oaths and bonds.

9. Can you give instances of abuses arising from the fee system? In what cases is this system best?

10. How are vacancies filled in the various offices?

11. How would you proceed to bring about the removal of a certain officer for non-performance of his duties?

12. In most States, the building and maintenance of roads is purely a local function. Is this work successfully performed? Should the States aid in making good roads? Forum, 32 : 292–297.

13. The short ballot, Outlook, 92 : 635–639; 780–781; 829–831; 971–972; 93 : 896–897.

14. Compare local government in the United States with the system of France. Wilson, The State, 214–223. Which do you prefer?

15. Make an outline of the three branches of government in your State on this plan:

Government	Legislative	Executive	Judicial
State			
County			
Town			

16. General accounts of State governments are found in Bryce, I, chapters 41, 42, 44, 45; Wilson, The State, 500–524; Beard, chapter 24.

CHAPTER IV

CITY GOVERNMENT

The growth of large cities.

THE crowding together of people in large cities is the result of new industrial conditions that have come about in America since the beginning of the nineteenth century. The immense increase in the use of machinery driven by steam and electric power has made possible the modern factory system. Manufacturing is no longer a home occupation; its great establishments gather about them the workmen whose numbers swell the city populations. Improvements in transportation methods and means of communication have developed commerce, and thus enhanced the importance of the city, which is the centre of commerce.

Conditions of city life.

The mere presence of large numbers of inhabitants within a limited area makes the conditions of human life in a city quite different from conditions in rural communities. In the city we have the poor, the ignorant, and the vicious thickly populating wards adjacent to others where wealth and culture predominate. Contamination of air, water, and food threatens health on every side. Business life in a city is remarkable for the energy with which it is conducted, the enormous sums involved in its transactions, and the employment of workmen in great numbers. It is said that "in the jostling throngs of the city a careless or vicious member of society has a hundredfold more opportunity to disturb the comfort and endanger the health and well-being of his fellows than in the country."

Government must fit itself, both in the manner of its organization and in the execution of its functions, to these

conditions. We see, then, the necessity of government on a large scale, conducted by numerous officers, and involving the raising and expenditure of vast sums of money. At the same time, we find the entrance of governmental regulation into the minute details of the citizen's life. We can hardly expect to have so much complicated political activity without correspondingly difficult problems.

City government is complicated.

City governments in the United States are organized upon the general plan of the division of powers among legislative, executive, and judicial branches. But the details of municipal organization and administration are so various that a general description is almost impossible. The framework of a city's government is prescribed in a special charter granted by the State legislature, or in a general State law. In the latter case some uniformity is secured among cities of the same size in the same State.

The charter.

The city legislature is regarded as the most important part of its government. It may be composed of one or of two houses. The members are uniformly elected, generally from wards; where there are two houses, the members of the upper one may be elected from the city at large. In size, city councils vary greatly. The members are sometimes salaried, but more frequently they serve without pay.

The council.

The chief executive is the mayor, who is elected to office by the people. His term is most frequently one or two years, but the tendency is to make it longer. He sometimes presides over the meetings of the city council, and in most cities has the power to veto its ordinances. The executive and administrative powers of the mayor are much greater in some cities than in others. He is usually the head of the police department, and in this direction his authority is quite extensive.

The mayor.

The judicial system of a city generally includes two

The judiciary.

kinds of courts: (1) the ordinary State courts (justice and district or superior courts); (2) special city or police courts. The jurisdiction of the latter is usually confined to minor cases. Juvenile courts exist in many cities.

Administrative departments.

In a town or village government, the local board may have oversight at the same time of public health, charities, streets, sidewalks, and lighting. But as population grows more dense, these public interests increase in extent, complexity, and importance until it becomes necessary to make provision for the separate supervision of each one. Each of these subjects, then, will be assigned to an *administrative department.* These departments will be few in small cities, but numerous in large ones.

How they are organized and managed.

There are several ways in which administrative departments have been organized and managed. (1) In small cities, committees of the council undertake this work. (2) Separate boards or commissions composed of citizens not otherwise holding public offices may be the controlling bodies. Frequently such a commission or board will employ an overseer to superintend work that is in progress under its direction. Both of these methods of controlling city departments have serious faults that will be mentioned later. (3) There is a tendency to place each department under a single head, and to have this officer appointed by the mayor.

We have now reviewed the general plan of organization for the government of most American cities. How have our city governments worked? On the whole, very poorly; indeed they have been regarded as the weakest part of our entire government system. But within recent years there have been encouraging signs of improvement. Some of the faults and failures of city government will now be considered and the remedies and steps in recent progress will be discussed.

(1) One constant source of evil in our cities has been the

mingling of State and National politics on the one hand with city affairs on the other. Men have been elected to city offices upon the basis of National issues; voters have adhered to party tickets, regardless of the issues involved in city problems, or of the merits of candidates. The result has been the election of inefficient or dishonest officials. These men, being elected by party machinery, have paid their political debts by appointing unfit men as their subordinates, and by otherwise turning the business of the city to the advantage of those through whose efforts they were elected.

City officers elected upon the basis of party politics.

One remedy for this situation is the separation of city and National politics in municipal elections. This is difficult to accomplish. But if candidates are still nominated by the regular parties, then independent voting will often secure the best available officers. There has been a marked tendency in recent years for voters to cast their ballots independently of party affiliations. Another remedy suggested is a reduction in the number of city officers elected—the "short ballot" principle (see p. 22).

Independent voting.

(2) Not only party politics, but personal greed has often dictated the selection of city officers. Men have secured these positions by election or appointment when they saw opportunity for "graft" through the dishonest handling of public money. Or, when work was to be done for the city, these officers have been paid for using their influence in favor of contractors, who in turn make dishonest profits. Again, individuals and corporations wishing to secure privileges from city governments have spent money for the election of officers who would do their bidding. Such has been the practice of some who obtained franchises for street railways, lighting, and water supply plants.

Evil influences in city government.

Shameful scandals have arisen in these ways when the mass of citizens, engrossed in their private affairs, have become indifferent to public business. Nothing but vigi-

lance in the selection of officers and constant watchfulness in attention to municipal affairs will remedy the evils here mentioned. There are hopeful signs of progress in this direction in many cities of our country.

Lack of responsibility.

(3) City governments may fail to work smoothly because of improper organization of city administrative departments. When a committee or board is in control, there is difficulty in locating responsibility among its members; these are apt to shift the blame for bad management from one to another, and when responsibility rests upon several, no one feels its burden seriously.

The concentration of all executive powers.

The remedy of placing each department under a single head is excellent in many cases. But if this head is appointed by the mayor and confirmed by the council another difficulty arises; for neither of these authorities may be willing to assume responsibility for his conduct. Some authorities believe that the complete separation of administrative departments (which really have executive business) from the legislative branch of the city government is the proper remedy: that the mayor should be given the entire appointing power and should then be held to complete responsibility for the conduct of the city's business. This is the plan of organization of most purely business enterprises, and its principle is being recognized in many city governments.

Civil service reform.

Another step tending toward purity in the control of administrative departments is the adoption of the merit system for subordinate officers. These officers have merely routine duties, or those of a technical nature, and they should be selected upon the basis of examinations intended to test their fitness, and regardless of personal or political considerations. These officers should be retained during good behavior, instead of being turned out at each change in administration. Civil service reform, as it is called, tends to eliminate party politics from city government; it

should help to place public interests above private, and to make methods of municipal government more business-like.

Difficulties in the execution of law.

(4) Reference has already been made to the opportunities for evil that the density of population in a great city offers. This condition is aggravated when the police department is inefficient, through lack of proper methods of selecting police officers; or when politics (either party or personal) has such influence that it interferes with the strict performance of their duties. Police officers sometimes extort money from law-breakers under threats of arrest, and criminals are forced to pay for protection. These bad conditions are partly accounted for by the indifference of honest citizens who may know of their existence.

Financial problems.

(5) The administration of a city's finances tests, to the utmost, the quality of its government. The revenues and expenses of many cities exceed those of the States in which they are situated.* The raising and expenditure of these vast sums of money without the taint of fraud is very difficult. (1) When money is raised by taxation, we shall see in a later chapter how, by the undervaluation and concealment of property, many persons escape their just burdens. Such abuses are more difficult to detect in cities than in rural communities, where business is conducted with less privacy.

Taxation.

The expenditure of public money.

(2) The expenditure of public funds gives opportunity for the wrong use of this money. The citizens generally do not understand, and do not watch carefully, the processes by which their money is applied to the objects of city government. This is because expenditures are made in such a great variety of ways, and because the machinery of city government is complicated. The officers who are

* In 1908 the 158 largest cities of the United States (those having 30,000 population or more) spent a total of $450,000,000. The per capita expense of their governments was $16.81.

responsible for the expenditure of money are frequently unknown to the tax-payer. These officers are more indifferent to the existence of abuses in connection with city finances, and the pressure of public opinion is much less direct than it is in rural communities.

The table below shows the number of cities in the United States of more than 8,000 population for each census year, and the percentage of the total population living in those cities.

	Number of cities	Per cent. of total population		Number of cities	Per cent. of total population
1790.....	6	3.35	1860.....	141	16.13
1800.....	6	3.97	1870.....	226	20.93
1810.....	11	4.93	1880.....	286	22.57
1820.....	13	4.93	1890.....	447	29.20
1830.....	26	6.72	1900.....	545	33.10
1840.....	44	8.52	1910.....		
1850.....	85	12.49			

Why debts are contracted.

The question of finances is most serious in cities of rapid growth. For here the extension of streets and other public improvements offers opportunity for advertising the city and so building up its business as well as increasing the value of its real estate. Consequently, there is always excuse, and frequently necessity, for the contraction of debts, and the proposition to issue bonds is easily carried by popular vote. In most States, limits have been set, either by law or by the State constitution, upon the amount of debts that cities may contract.

The granting of powers to cities.

(6) Attention has been called to the fact that all local governments derive their powers from the State. The city is a political corporation created by an act of the legislature. Two evils have arisen at this point. (1) The powers granted have not been ample enough, so that cities have found themselves unable to do things that seemed

best for their welfare. (2) State legislatures have passed special laws granting particular cities their charters and have afterward legislated for these cities by special acts.* The corrective for this evil has been applied in a majority of States, where special legislation for cities is prohibited; cities must be organized and their powers must be defined by *general* laws. These laws apply uniformly to cities of the same class, as determined by their population. "Home rule" for cities, within the limits of these general laws, seems a reasonable demand. This demand will become more insistent as public opinion becomes better organized, and this will come as a result of increased attention paid by the mass of citizens to municipal affairs. This spirit of local self-government may even demand the right of the people to frame and adopt their own municipal charter; and this method of organizing a city, or of adopting a new charter, has been followed in some instances.

The question of home rule.

(7) The problem of municipal franchises is one of the most difficult in the government of our American cities. It is generally recognized that because of the circumstances under which water, light, and transportation facilities are furnished, the industries that furnish these necessities tend to become monopolies.† Little or no competition between rival plants is possible.

Natural monopolies.

At one point these industries are different from other

* New York City has suffered greatly from this evil. A recent writer says: "The city of New York is governed from the State capitol. Scores of laws are passed every year relating to matters of purely local interest and of minor importance. A bill for a park in a densely populated portion of the city is introduced at Albany, and perhaps passed with little regard as to whether the city or the people of the locality desire its enactment. . . . This mass of legislation, which flows into Albany from New York and from every other city, overburdens the State legislature. If every bill of local interest were thoroughly considered, nothing else could be accomplished, and the interests of the State would be neglected." —Municipal Affairs, IV, 452, Sept., 1900.

† See Ely, Problems of to-day, chapters 18 and 19.

The granting and provisions of franchises.

enterprises: their operation involves the use of the city streets. Because the streets are public property, the right to construct and operate a plant is given in a franchise granted by the city council. A franchise is in the nature of a contract, the parties to which agree upon the obligations assumed by each. An individual or a corporation obtaining a franchise agrees to furnish a certain quality of service. If this is not done, the penalty may be the forfeiture of the franchise. Practically, however, it has been found very difficult to enforce strict adherence to the terms of agreement, by legal procedure. The rates to be charged for service may or may not be stated in the franchise. If they are not, the patrons have little protection from extortion. The justice of fixing rates in a franchise depends upon the length of time for which it is to operate. The growth of a city through a long term of years brings immense advantages to the industries that we have under discussion; for the greater population can be served at only slightly increased cost to the owners of the plants.

How public service interests influence city affairs.

It is a consequence of these conditions that in many cities the operation of these plants has yielded excessive profits to their owners. Now, for securing by franchise the right to establish one of these public service plants men have been willing to invest large sums of money in the way of campaign contributions to control elections, and by bribery to control city councils. Again, the person or corporation already possessing a franchise often desires the extension of the time of its operation or of the rights granted by it. Social, business, and political pressure of every nature may be used to attain the desired end. The result is that public officers, instead of being public servants, become the tools and agents of private interests.

"Stock watering."

When the rates or charges are excessive and dividends are large in consequence, corporations may resort to "stock watering" as a means of concealing the true state of affairs. That

is, new shares of stock are given away or sold at a nominal sum, generally to those who already own stock; so the per cent. of gain on each share is less, though the rate of profit on the money actually invested is still unreasonably high.

Such being the conditions under which public service plants have been operated by individuals and corporations, the question has been freely discussed, Should not the city itself own and control these industries, and furnish the service to the people at cost? Two alternatives are presented: public ownership and operation, or strict control by city or State authorities.

Arguments for municipal ownership.

(1) It would seem that the degree of corruption attending the granting of municipal franchises is a strong argument for municipal ownership. (2) It may also be argued that since the city would not operate these plants for profit, rates could be made lower than under private ownership. (3) Municipal ownership is urged as the best means of awakening the interest of the people in city affairs.

Arguments for private ownership.

In opposition to this policy it is said (1) that the same corrupt influences that are used to secure franchises would be employed to bring about, through elections and appointments, control of a municipal plant. Would not such a plant be operated for the political advantage of the party in power? (2) Private ownership, it is urged, would best secure economical management. The personal interest of obtaining profits would not operate to keep down expenses in the case of a municipal plant. (3) The advocates of private ownership point to some cases of failure where municipal ownership has been tried. They argue that the success of this plan in European cities is no criterion for our own country. On the other hand, statistics and testimony of successful municipal ownership are produced from some American cities.

Those who do not accept municipal ownership as a desirable solution of the problem advocate various ways

Methods of control of public utilities.

of controlling the operation of plants under private or corporate ownership. The following regulations * are recommended:

(1) No franchise should be granted for a longer term than twenty-one years.

(2) The grantee should pay a fair price for the privileges secured; and, in addition, a percentage on net receipts.

(3) At the end of the term, the franchise should revert to the public; the right of the city to acquire the plant, with or without compensation, being reserved.

(4) The financial accounts of the grantee should be matters of public record, and should be open to examination by an officer of the city.

Fundamental problems in city government.

It may be apparent from the foregoing discussion of the problems and evils of city government that the fundamental difficulties are two: (*a*) faulty organization, and (*b*) lack of the proper civic pride in the body of citizens. In the matter of organization, progress is being made toward less State interference with city affairs, civil service reform, and the concentration of power and responsibility in fewer officers.

The commission form of government.

Within recent years the "commission plan" has been adopted in numerous cities. The essence of this plan is the abolition of the present division of legislative and executive functions; they are united in the hands of a small body of officers, which thus takes the powers of both mayor and council. Its adoption is now optional with cities in many States.

This plan originated in Galveston, Texas, in 1901, and a modification of it was soon afterward put into operation in Des Moines, Iowa. In Galveston a commission, composed of five salaried members (one being mayor), was elected at large for terms of two years. This body had both legislative and executive duties,

* Adapted from "A Municipal Program," 127.

each member being in charge of a department of the city government. Superintendents were employed to oversee the work under the various departments.

Among the arguments in favor of this plan are these: (1) City government is chiefly a matter of administrative business, rather than the laying down of general policies, which belongs to State and National governments. Good administration requires the concentration of power in the hands of a few persons, as in the case of business corporations; these persons should have the power both to determine and to execute the plans they consider wise.* (2) Under this concentration of power, responsibility is readily located. (3) A few men who are experts can be employed, at good salaries, to devote their entire time to city affairs. (4) A better type of city officers will thus be selected. (5) More civic interest will be aroused. Arguments for and against this plan.

In opposition to this view, it is claimed that : (1) Such great power should not be lodged in the hands of a few men. (2) Certain parts of a city, or certain classes of people, would not be adequately represented. (3) This is a movement away from democracy. (4) It offers opportunity for corrupt men to do injury commensurate with their great powers.

The adoption of the commission form is usually accompanied by the enactment of certain measures by which the citizens may freely assert their will in important matters. Such means are the *initiative*, by which they may demand that the officers take action upon a certain subject; the *referendum*, by which the people may approve or reject measures that have been passed by the council; and the *recall*—a device under which a certain number of voters may demand that an officer stand for re-election (against competitors, if any such appear) at any time during his term. The recall is based upon the idea, familiar in business affairs, that an employee should be held to account for questionable conduct at any time, regardless of the term of his appointment. Popular control of officers. The recall.

It may be safely asserted that whatever plan of organi-

* Those who advocate the "short ballot" believe in the commission plan of city government. See p. 22.

The necessity for an active public spirit.

zation a city may adopt, its government will be efficient and pure only when an active public spirit directs the selection of good officers and holds them to high standards of action. The quality of this public spirit will depend upon the interest of citizens in city affairs. Doubtless the creation of a unified civic spirit is rendered very difficult by the presence in many cities of a variety of nationalities.

Foreign population

But the final responsibility for bad government cannot be placed upon our citizens of foreign birth; nor even upon the ignorant and vicious classes. It may be fairly maintained that "there is not a city in the Union in which the honest, orderly, and industrious voters are not in a large majority." Citizens need, above all, to feel a unity of interest in good government. They need to feel the necessity of co-operation in civic improvement, private opinions and selfish interests giving way to public welfare. The attainment of this ideal is a matter of slow growth; and the new and unsettled conditions of rapidly expanding cities retard this growth. In the end, good city government will be brought about only by constant and patient attention to civic duty on the part of citizens.

How cities are extending their functions.

The growth within recent years of a better public spirit in cities is indicated by new conceptions of the possible services that a city government may render to the people. In addition to measures safeguarding public health through proper sanitation, cities have begun to establish public baths and systems of medical inspection in schools. Public parks and boulevards have long been recognized as proper means of providing for recreation; public playgrounds and gymnasiums are now being added. Many cities have regularly established an administrative department in charge of these means of recreation. School systems and libraries, long the sole means of public education, are being supplemented by vacation schools, municipal art galleries, public lectures, and concerts. The need of

proper opportunities for social life is being supplied by the use of school-houses as "social centres." Attention to the arrangement and architecture of city buildings and the beautifying of homes and streets, is another indication of the new civic feeling that is growing up in these times.

Reform movements.

Many of the reforms and improvements that have been accomplished in city government are the results of study and agitation undertaken by such organizations as the City Club of Chicago, the Municipal Reform League of Boston, the Municipal League of Philadelphia, and the Good Government Clubs of New York. Numerous State leagues and the National Municipal League give opportunity for discussion of municipal problems, besides spreading information by their publications. The public schools have a part to perform in fostering the newly awakened civic spirit of the times. Preparation for the performance of the citizen's duties is becoming an important part of school work. Thus we see that the forces are at work which will ultimately solve the problems of city government.

The government of European cities.

Similar industrial changes have caused the same rapid growth in European as in American cities. Between 1870 and 1890, Berlin grew faster than New York, Hamburg faster than Boston, Munich faster than St. Louis.

The general character of municipal government in European cities differs in several respects from that of our American cities. There the government occupies a place of greater importance. Its functions are more extended, covering besides the activities mentioned above municipal lodging-houses, markets, slaughter-houses, pawnshops, savings banks, etc. Moreover, the terms of officers are longer and their tenure is more secure. Hence, office holding in some places comes to be a distinct profession for which training is required. In Germany mayors are frequently employed by one city after another as the heads of business corporations are in this country.

Party politics plays less part in the affairs of European cities than in the United States; they have, consequently, less cor-

ruption among city officials. The idea of a trained and permanent civil service is universal. Greater public interest and higher ideals of city government may be found in European cities.

Supplementary Questions and References.

Make a study of your (or a neighboring) city on the following points:

1. Economic reasons for its location and growth.

2. Time and circumstances of its incorporation. The original limits. Reasons for subsequent enlargement of the city.

3. The city legislature—name, number of members. How are they elected? For what terms? Are they paid? Do you think changes would be desirable in these respects? Can you make a general statement concerning the occupations and qualifications of members?

4. The executive—title—term—salary. What are his powers of appointment? Has he the veto power? Should his powers be increased?

5. Judiciary—courts—officers—jurisdiction.

6. How many administrative departments are there? Are they under the control of committees, boards, or single heads? What is the relation of each department to the mayor? to the council? Outline the work of each department. Does the present arrangement work successfully?

7. Obtain a statement of the city's finances, showing receipts and expenditures. Is there a bonded debt? How is it managed? Is there a sinking fund?

8. What is the relation existing between this city and the State government? Would more "home rule" be desirable, or less?

9. How are the water, lighting, and street-car plants managed? Would you change the system? Do you favor the extension of the city's functions in other directions?

10. What kinds of street pavement are used? What is the best kind? How much does it cost?

11. What method of garbage disposal is in use? How are the streets cleaned? Are these methods effectual? Can students

in the public schools help in keeping the city clean? Can they do anything toward beautifying the city?

12. What is the organization of the police department? Can you recommend improvements? If an officer fails to enforce an ordinance, what course would you take to secure its enforcement?

13. Does your city have to deal with problems of the slums and tenement houses? Is there a large foreign-born element? Would you recommend any limitation of the suffrage?

14. Are independent or reform movements successful in this city?

15. What are the excellent features of the city's government? What are its faults? What reasons can you assign for its excellencies and its failures?

16. Organize your class as a city council and pass ordinances that you think beneficial.

17. The most useful books on city government are the following:

Bryce, American Commonwealth, I, chapters 50–52; II, chapters 88, 89; Conkling, City Government in the United States; Wilcox, The Study of City Government; Devlin, Municipal Reform in the United States; Tolman, Municipal Reform Movements; Bliss, Encyclopedia of Social Reform; Riis, How the Other Half Lives; Howe, The City, the Hope of Democracy; Beard, American Government and Politics, chapters 27 and 28; Zueblin, American Municipal Progress; Rowe, Problems of City Government; Goodnow, City Government in the United States.

18. For arguments for and against municipal ownership, see the following: Arena, 30 : 392–400; 504–509; 32 : 461–471; 33 : 361–369; Indept., 53 : 2632–2636; 55 : 93–96; 60 : 449–452; 1153–1157; Outlook 82 : 504–511; Rev. of R's, 33 : 724–725; 35 : 329–333.

19. The commission form of city government. Arena, 38 : 8–14; 144–149; Cen. Mag., 42 : 970; Indept., 63 : 195–200; Outlook, 85 : 834–835; 839–843; Rev. of R's, 36 : 623–624.

20. Civic beauty. Indept., 54 : 1870–1877; World's Work 11: 7191–7205; Rev. of R's, 38 : 355–357.

21. City playgrounds. Indept., 65 : 420–423; In Chicago, Outlook, 81 : 775–781.

22. Juvenile courts. Indept., 58 : 238–240; Rev. of R's, 33 : 304–311.

23. Fire protection in cities. Outlook, 88 : 681–693; Rev. of R's, 38 : 703–713.

24. European cities. Rev. of R's, 41 : 752–753; Comparison with American cities, Scribner's Mag., 40 : 113–121. German cities, World's Work, 15 : 9913–9920; Outlook, 83 : 618–620.

25. Articles upon particular cities. Brookline, Arena, 32 : 377–391; Detroit, Outlook, 91 : 206–216; Chicago, Outlook, 92 : 997–1013; New York, Rev. of R's., 40 : 594–601.

26. Miscellaneous. The ideal city, Outlook, 93 : 141–142; Better business methods, Rev. of R's, 37 : 195–200; Civic betterment, Rev. of R's, 39 : 77–81; Smoke problem, Rev. of R's, 39 : 192–195; Citizenship in cities, Outlook, 82 : 271–273; City elections, Outlook, 89 : 371–375; Expansion of municipal activities, Arena, 33 : 128–134; Problems, Indept., 59 : 902–908; The budget, Outlook, 92 : 1048–1059; The menace of crowded cities, World's Work, 16 : 10268–10272.

CHAPTER V

ELECTIONS AND PARTY GOVERNMENT

Times of elections.

In the local and State governments of our country the number of officers elected is very large and the terms of office are short; hence elections are of frequent occurrence. Town, village, and city elections generally occur in the spring of the year, while State and county officers are elected at the same time with members of Congress, on the Tuesday after the first Monday of November in the even-numbered years. There are, however, some exceptions to these general rules.

Suffrage qualifications.

Since suffrage qualifications are fixed by the different States,* there are many variations in details, though general agreement prevails upon the fundamental requirements. (1) The age at which a person may vote is uniformly twenty-one years. (2) Manhood suffrage is usual, but a few States have granted full suffrage to women. In most States of the Union women vote at school elections. (3) It is usual to require a residence of six months or one year in the State where a person wishes to vote; also, a brief term of residence in the election district. (4) Full United States citizenship is required in a majority of the States. In the others a foreigner who has declared his intention to become a citizen is given the right to vote.

The right of suffrage is withheld from certain classes of citizens, such as the insane and the feeble-minded, and

* The National government controls suffrage in the States through Amendment XV of the United States Constitution; also, indirectly, through Article I, section 2, clause 1. Section 2 of Amendment XIV might, if it were enforced, act as a restraint upon the States in their restrictions of the suffrage. See pp. 142–143.

those who have been convicted of certain crimes. One hundred years ago there were property qualifications for voters in every State in the Union. The democratic movement of the first third of the nineteenth century swept these laws away. At present the payment of a tax is a requirement in a few States. An educational qualification has been fixed in a few of the Northern and in several Southern States.

Woman suffrage.

The question of full woman suffrage is attracting attention, partly as the result of agitation carried on in Great Britain, where women vote for all elective officers except Members of Parliament and now demand the latter privilege. In most European countries, women have more or less limited privileges of voting; generally they must be property owners, have certain incomes or be engaged in business. In Australia and New Zealand they have full suffrage rights.

Registration.

Within recent times great changes have taken place in the manner of conducting elections in the United States, as the result of efforts to check wide-spread election abuses. Among these abuses was "repeating"; that is, voters went from one polling place to another, voting at each. It was comparatively easy to commit this fraud in large cities; the enactment of registration laws has materially checked this evil. At a stated time before an election the voter must have his name and residence recorded with the election officials. The registry lists are published so that false registration may be detected. Such laws exist in a majority of the States, though their action is in some cases confined to the larger cities, and here the laws are sometimes not strictly enforced. As each ballot is cast the voter's name is checked in the registry list. Voters who have failed to register may "swear in" their votes; that is, take oath that they are qualified electors. This opens the way to fraud and is consequently prohibited in the

large cities. In the main, it is recognized that registration must be a feature of every good election system.

The Australian ballot system.

Many other forms of election abuses were checked by the adoption of the Australian ballot system, which now exists in all but one or two of the States. Under former election methods, each political party printed its own list of candidates, or the tickets might be printed by individuals. A variety of frauds might then be committed. A number of tissue-paper ballots were sometimes folded together and cast as one ballot. Candidates could have ballots printed like those of the rival party with the exception of one or two names. Or, slips of gummed paper (called "pasters"), with the name of one candidate, could be fastened upon the ballots. In these and similar ways ignorant and careless voters were often deceived. Hence we now have the *official ballot*, printed by the government, on which the names of all the candidates must appear. Another essential feature of the Australian ballot system is secrecy. The ballots must be obtained from election officials within the election booth; screened shelves are provided to which the voter must immediately take his ballot and mark it. He must then fold and cast the ballot without communication with any but election officials. "Electioneering" is prohibited within or near a booth.

Two forms of the official ballot are used, as illustrated below.

(1) The original Australian ballot form.

For Governor.	Party.
A. B.	Democratic.
C. D.	Prohibition.
E. F.	Republican.

For Lieutenant-Governor.	Party.
G. H.	Prohibition.
I. J.	Republican.
K. L.	Democratic.

For Assemblyman.

M. N.	Republican.
O. P.	Democratic.
Q. R.	Prohibition.

(2) The modified American form.

State Officers	Democratic	Prohibition	Republican	Individual Nominations
Governor.....	A. B.	C. D.	E. F.	
Lieutenant-Governor	I. J.	K. L.	M. N.	
Member of Assembly.....	O. P.	Q. R.	S. T.	

More intelligence and care are required in the use of the first form; the second form favors the voting of straight tickets.

In spite of these reforms in election methods and the devices for preventing fraud and bribery, there still exists a considerable amount of illegal voting. This is possible in great cities, where there is a large floating population;* also in certain States, where the parties are nearly equal in strength. Corrupt election officials sometimes violate even the most carefully framed regulations of law. These officials are ordinarily selected from the two leading parties. Challengers, who also represent parties, are allowed to question the right of any person to vote.

The canvass.

After the polls are closed, the counting of votes, or official canvass, takes place. Returns from the election precincts are sent to the city, county, and district canvassing boards to be tabulated. The results are then sent to the State canvassing board. Each board has authority to decide which candidates are elected within

* Hence the term "floaters" for purchasable voters. These may be "colonized," *i.e.*, temporarily located in a certain ward for voting purposes.

its jurisdiction. Certificates of election are issued to successful candidates, and thus the process of election is completed.

An election is but the final step by which the voters express their judgment in selecting men for office. Two other steps, both vital in their importance, must be discussed in gaining a view of the entire process: *viz.*, the making of nominations and the management of political parties.

Party committees.

The work of nominating candidates, the conducting of political campaigns, and the general oversight of party interests in an election, are all in the hands of a series of committees organized in each of the political parties. Thus, each party has a local committee in every town, village, and ward. There are also, for each party, city committees for the management of party machinery in cities; county committees; a State committee, which controls campaigns and determines party policy in the State; and, finally, a National committee for the management of each National party organization. Besides these, there may be committees for each State Senate and Assembly district, and for each Congressional district. All except the local committees are appointed in the party conventions.*

The two principal methods of making nominations are (1) the caucus and convention system and (2) the primary election system. Within recent years the latter has displaced the former in many of the States, for reasons that will be stated.

The caucus or primary.

A caucus, or primary, is a meeting at which all the voters of a party in a town, village, or ward may assemble. Before the election of town, village, and ward officers, caucuses will nominate candidates directly. For all but these local elections (*i.e.*, for the nomination of county,

* This account represents the party organizations as complete; they are not so in many parts of the country.

State, and National officers) a second step is necessary; the caucuses choose delegates to conventions where these nominations are made. Thus, before a general election, we have county conventions for the nomination of county officers; various district conventions, where candidates are nominated to run for the State legislature and for the National House of Representatives; State conventions, composed of delegates chosen at county or district conventions; and, finally, in years of presidential elections, there are still other series of caucuses and conventions, culminating in the great National conventions, where presidential nominees are selected. (See p. 216.)

Political conventions.

Besides nominating candidates for offices, the various conventions mentioned elect party committees and adopt party platforms. The platforms contain statements of party doctrine and pledges of party policies.

Characteristics of the system.

One characteristic of the caucus and convention system is that the mass of voters participate in the process only in the town, village, or ward caucus. Elsewhere, they are represented by delegates or committees. In conventions of the largest units (State, Congressional district, and National conventions) the delegates are twice removed from the voters. Another feature of this system is its complexity. To nominate the various groups of officers in a "general election" year, two, and sometimes more, series of caucuses and conventions are held. Because of these facts, abuses have arisen in connection with this method of making nominations.

Defects of the system.

Usually much less than one-half, and in many places less than one-tenth, of the voters attend the primaries. This is accounted for by the indifference of some, the ignorance of others, and the inability of still others to understand the complexities of this method of making nominations. Again, caucuses are in many instances capable of being manipulated by political leaders to suit their own ends. In the next place, there is no assurance that the delegates elected by a caucus will fulfil the wishes of

a majority of the voters. This is especially true when conventions elect delegates to still other conventions. There is no way of holding a delegate responsible for representing accurately those who chose him. In conventions, then, skilful politicians may bring pressure to bear upon delegates to direct their votes from the line of public into that of private interest. This may be done by bribery, by the trading of votes, or by promises of business or political advantages.

The primary election system.

Because of these abuses, a demand arose that voters select candidates *directly*, through the primary election system, instead of indirectly through delegates.* Where this system prevails, nominating conventions are abolished. Any person who secures a certain number of signatures to a petition (or "nomination paper") can have his name placed upon the party ballot that is used at the primary election. On the day of this election, each voter may vote directly for the men whom he wishes to be his party's candidates for the various offices. The names of the men who receive the highest number of votes will be placed upon the official ballot used in the regular election.

Its advantages.

It is thought that through primary elections (1) candidates will more truly represent the choice of the mass of voters in a party; (2) that because they vote directly for candidates the voters will take more interest and participate more freely in the nominating process; and (3) that it will be more difficult for men to further selfish ends through the manipulation of a few delegates.

* "The movement was in part a democratic one, and was animated by a desire for wider popular participation in government. In this sense it was a part of a broad tendency in the direction of popular control over all the agencies of politics. The referendum, the initiative, the recall, and the direct primary are organic parts of a general growth of democratic sentiment, demanding methods by which more direct responsibility of the governor to the governed be secured. . . . In the last ten years [1898–1908] about two-thirds of the States have enacted direct primary laws of various types. Some of these laws have been obligatory and others optional; some have been general in application and others merely local."—Merriam, Primary Elections, 69–70.

In States having the primary election system, conventions are still held for the purpose of selecting party committees and for the adoption of party platforms. Such conventions may be composed either of delegates or of the candidates already nominated.

Nomination by petition.

It will be noticed that both of the nominating systems discussed above assume that candidates represent political parties. When non-partisan candidates are desirable, then another method is in use—nomination by petition. Any person securing a certain number of signatures to his petition may have his name placed upon the election ballot. This is done frequently in the election of judges and school officers, and is becoming more common in city elections. For voters more often break party lines upon city issues than was formerly the case.

The work of political parties.

A part of the work of political parties is referred to in the preceding paragraphs. They are organizations of voters which (1) help to determine public policies through the adoption and carrying out (or refusing to carry out) party platforms; (2) they take charge of the nomination of candidates for office; (3) they conduct campaigns in order to secure victory in elections; and (4) they constantly exert influence upon the conduct of the officers who make and execute our laws. It would seem that the sole object of a political party is the securing of certain policies in government through the election of certain men to office; and that in the long run the government in the hands of the victorious party should reflect the views and follow the wishes of a majority of the voters in that party. But these theoretical propositions are subject to many modifications in practice. Unfortunately, the absorption of the voter in his private affairs makes him too often indifferent to the conduct of government. In the second place, the great body of voters in a party, even if they have the inclination, have very inadequate means of originating a policy or impressing their views upon men in office. The

result is that *the management of political parties falls into the hands of a comparatively few men.* They urge policies upon voters; they select the men who become candidates; they conduct the machinery of campaigns; and they either become the officers themselves or control those persons in office whom they have placed there.

A few men may control.

A few men can control a political party by thorough organization. They have their subordinates in different localities, and these in turn have subordinates who carry out orders from their superiors. A thoroughly organized body of political workers who dominate a party in this way is called a "machine." Its operations are generally directed by a "ring" or a "boss."

Machine politics.

Now, the motives that inspire the machine and the methods it employs may be either good or bad. Organization, leadership, and machinery are always necessary to secure harmonious action in bodies of men. But the opportunities for corruption in our party system are many; so that the politicians who will make freest use of corrupt means to gain their ends are very apt to succeed, when those who are less unscrupulous will fail. Consequently, the phrase "machine politics" is generally understood as referring to political methods that have little to recommend them, if they are not thoroughly bad.

Corrupt practices acts.

The work of parties cannot be accomplished without the expenditure of money—sometimes the sums are many thousands of dollars. This is contributed by candidates, by private individuals, and by the representatives of business houses and corporations. Here is one important source of corruption in our government; for those who contribute with selfish ends in view, rather than from principle, expect rewards at the expense of public interest. So great have evils of this kind become that many "corrupt practices acts" have been passed intended to check them. Besides providing severe punishment for bribery

and the buying of votes, these laws require the publication of campaign expenses by candidates. In some States corporations are prohibited from making campaign contributions. Limiting the amount that may be contributed or expended is another way of combating this evil.

The voter's duty in politics.

All such laws and all real reforms in the laws regulating parties and elections are excellent. But laws and constitutions merely indicate the *form* of our government; its *spirit* may be very different if the provisions of law are nullified in practice. Experience shows that this is very liable to happen wherever the mass of citizens become indifferent to the conduct of public affairs. The voter can exert his influence in many ways, within his party, for good government. He can sometimes best serve his party by turning against it; for the fear of such independent action may restrain party leaders when nothing else will.

Supplementary Questions and References

1. In your State—
   What are the times fixed for elections?
   The qualifications of voters?
   The legal regulations governing registration—the ballot—provisions for secrecy—election officers—the official canvass?

2. What method of making nominations is most usual in your State? Are other methods allowed? What are the advantages and disadvantages of each?

3. Why are women given the right to vote in school, municipal, or financial matters only, in some States?

4. Do you believe in a property qualification for voters? An educational qualification?

5. Find in a newspaper almanac the list of States that prescribe educational qualifications for voters; also, property tests. In what States have women been given full suffrage?

6. The laws of a number of States permit the use of voting machines. See Forum, 28 : 90–93.

7. Follow in detail the steps leading to a general election in your State:

(1) Notices of election—when and by whom issued.

(2) Action of party committees.

(3) Method of nomination of county and State officers and Representatives in Congress.

(4) Party platforms.

(5) Conduct of the campaign—raising and expenditure of money—distribution of literature—political speeches, etc.

8. Should women be given the full right of suffrage? Atl. Mo., 96 : 750–759; 102 : 196–202; Forum, 43 : 264–268; Indept., 58 : 1309–1311; 68 : 686–689; N. Am. Rev., 183 : 484–498, 1272–1279; 186 : 55–71; 189 : 502–512; 190 : 158–169; 191 : 526–536, 549–558; Outlook, 82 : 167–178; 91 : 780–788; Rev. of R's, 36 : 479–482; 38 : 94–95; 39 : 626–627.

9. Negro suffrage. Atl. Mo., 88 : 433–437; 94 : 72–81; Indept., 55 : 2021–2024; Outlook, 87 : 529–531.

10. Nominating Systems and Primary Reform. Arena, 35 : 587–590; Forum, 33 : 92–102; 42 : 493–505; Outlook, 90 : 383–389; 91 : 426–428.

11. Ballot and election reform. Indept., 68 : 1020–1026; N. Am. Rev., 189 : 35–42.

12. Our party system is discussed in Bryce, II, chapters 53–75; Bliss, Encyclopedia of Social Reform; Beard, American Government and Politics, chapter 30.

CHAPTER VI

PUBLIC FINANCES

Why taxes are necessary.

THE operations of government cannot be carried on without the expenditure of money. To meet this expenditure, those who are benefited by the protection and security that government affords must be taxed. Moreover, as the functions of government are extended to include the furnishing of conveniences and the maintenance of institutions that instruct and elevate the people, increased outlays of money become necessary, and, consequently, more extensive taxation. The raising and expenditure of public money is, then, a subject of the greatest importance.

State and local governments raise money in various ways, the principal ones being by taxation and by borrowing. Methods of taxation will first be treated.

(1) The general property tax. This form of tax exists in all the States. It is based upon the theory that each person's contribution to the support of government should be in proportion to the amount of property that he owns. The first step in determining the amount of taxes he shall pay is the placing of a *valuation* upon his property; this is done by local or county officers, called assessors.

Valuation of property.

The assessment roll contains the name of each taxpayer, with a list of his property and its value. State laws usually require that this be full cash, or actual, value; but undervaluation is the rule rather than the exception. Since the amount of an individual's taxes depends upon the assessed value of his property, it is natural that property-owners should frequently think that their assessments are too high. They are accordingly allowed to

appeal to a local board, which has the power to review and correct assessment rolls by lowering or raising valuations. The board may also add to the list of property recorded on the roll, and may strike out property that is illegally assessed.

Equalization of valuations.

Now, just as there is difficulty in fixing satisfactorily the valuation of each individual's property, so a similar difficulty is experienced in adjusting valuations among the villages, towns, and cities. For the county and State taxes that each local unit must pay depend upon its total valuation. Each assessor is tempted to keep valuations low in order that his local unit may not be heavily taxed. To remedy this difficulty, a county board of equalization is provided, which has the power to raise and lower valuations, as shown in the assessment rolls. In some States this board may change individual valuations; in others simply the total valuation of each local unit. Again, we have a like difficulty in the next step of the process. The amount of taxes which the property-owners of a county will be called upon to raise for State purposes will depend upon the valuation of the property in the county. Consequently, county authorities are apt to think it incumbent upon them to see that their valuations are low, so that their State tax will be low. To correct this tendency toward undervaluation, State boards of equalization have been established in many States, with power to review the county assessments and to place them on a basis of relative equality.

How the rate of taxation is calculated.

The rate of taxation is determined in each local unit. To the total amount necessary for purposes of the local government is added its share of the State taxes that this local unit must bear. This sum is divided by the total valuation of all the property in the local unit. This gives a percentage which is the tax rate. Applying this rate to each person's valuation determines the amount of tax he is to pay.

Collection of taxes.

The property-owner pays taxes but once each year, and he seldom knows what share of his payment goes toward the support of each government that taxes him. In some States the payment is made to the local treasurer,

and in others to the county treasurer or collector. When local treasurers collect taxes they deduct the amount raised for local purposes before sending the balance to the county treasurer. After the amount levied for county purposes has been kept out, the county treasurer sends the balance to the State treasurer, and thus the process is completed. The failure to pay taxes renders property *delinquent.* It may then be seized and sold. After taking the amount due for taxes and expenses, the remainder, if any, is returned to the original owner.

Exemptions.

Some descriptions of property are quite uniformly exempted from taxation; such are, all property belonging to Federal, State, or local governments, and the property of educational, religious, scientific, and benevolent associations. In some States, also, a certain amount of the personal property, such as the household furniture, of each property-owner is exempt from taxation.

How this system works injustice.

The faults found in the general property tax system are serious. (*a*) Undervaluation is very common and produces great injustice. If, in a given community, all property were uniformly undervalued, no injury would result; this would simply raise the rate. But certain individuals may secure, either through fraud or error, lower valuations than others having the same amount of property. Again, the man of small property is more likely to have his assessment placed near its actual value than is the man of wealth. The assessment of property is more accurate in farming communities than in cities. This places a heavy burden upon the farmer.*

(*b*) Another evil of this form of taxation arises from the fact that personal property quite generally escapes taxation. Property is divided into two classes: real estate,

* It was estimated by a California commission on revenue and taxation that the farmers paid in taxes five times as much in proportion to their income as was paid by manufacturers.

which includes land and the fixtures thereon, as buildings and improvements; and personal, which includes all other property. Under the head personal property are placed furniture, clothing, jewelry, merchandise, farm products, live-stock, machinery, books and pictures, money, stocks, bonds, mortgages, notes, and credits. It is apparent that many of these things have values that an assessor cannot easily ascertain by inspection; other articles mentioned in the list are easily concealed. As a consequence, the appearance of personal property on the assessment rolls, and its assessment at values that are anywhere near actual value, depend upon the honesty of property-owners. In most States, assessors may, and in some States they must, take a sworn statement from each property-owner as to the actual value of his property; but this does not effectively correct the evil. Those who make complete returns are apt to be of the poorer class, besides trustees, administrators, and guardians who have legal control of property belonging to orphans, widows, and dependent persons; for the value of these estates is a matter of probate court record.

Most personal property escapes taxation.

It is apparent that our general property tax places an unjust burden upon the poor, the rural classes, the honest, and the helpless. It was adopted at a time when the distribution of property was more equal than at present, and before the growth of large cities and great industries. These new conditions demand new methods of taxation; but no single, practical substitute has been discovered and put into operation. Public interest has been aroused upon this subject, however, and some of the methods of taxation next discussed are intended to correct the inequalities of the property tax.

(2) The corporation tax. In a few States, a general corporation tax is imposed which is a fixed rate on the capital stock, or the earnings, of all corporations doing business

Corporation taxes.

in those States. Again, the rules of taxation applied to different classes of corporations may vary in the same State. The taxation of railroad property by local authorities has been quite generally abandoned, on account of the inequalities of assessment under this plan. In some States a special board values all railroad property in the State; in others this property is not taxed, but instead a tax is laid on the gross earnings, mileage, or capital stock of these corporations. Telegraph, telephone, express, and insurance companies are also subject to special taxes based on gross receipts, mileage of wires, etc.

Franchise taxes.

(3) Franchise taxes are becoming increasingly common in the States. Individuals and corporations operating water, lighting, and street-car plants are considered as possessing valuable property in the right, vested in them by their franchises, of using the streets. This privilege, it is said, as well as their tangible property, is a source of their income, and so should be taxed.

Reasons for inheritance taxes.

(4) Inheritance taxes are especially designed to reach the property of the very wealthy. It is believed that large fortunes result not merely from individual industry, but quite as much from the growth of the communities where they are accumulated. Hence the community should share in the distribution upon the death of the holder. Again, it is assumed that an undue proportion of these fortunes escapes the property tax; also, that their perpetuation in the hands of a few individuals is socially undesirable. This tax is easily collected, since probate court records state the amounts bequeathed. The rates are usually higher on collateral bequests, *i. e.*, those descending to others than the immediate family of the deceased. In some cases, also, the rates become higher as the amounts bequeathed become greater.*

* In a law of Wisconsin (1903) the rates vary from one per cent. to fifteen per cent., depending upon the degree of relationship and the amount inherited. California has a similar law.

(5) The income tax exists in a few States, but its use is being extended to others. It also is intended to reach the richer classes, since an exemption is always provided for the smaller incomes. Here, as with the inheritance tax, the rate should be made progressive, *i. e.*, the larger the amount taxed, the higher the rate of taxation. Income taxes.

(6) The poll tax, a fixed sum payable by male persons between certain ages, is collected in some States, though prohibited in others.

(7) Licenses. The greatest amount of revenue is derived under this form of taxation from liquor dealers. In addition, auctioneers, showmen, peddlers, hackmen, and draymen often pay license fees. Besides the revenue gained, the governments find the license system advantageous as a means of controlling these occupations.

(8) Government revenue is also derived by the exaction of fees for the performance of official services. These fees are frequently a perquisite of the officer performing the services; but many times it is found more economical to pay the officer a salary and turn the fees into the public treasury. Fees.

(9) In cities, we find the practice of levying special assessments upon property that has been enhanced in value by virtue of some public improvement, as, the pavement of a street. This tax may be made to cover the greater part of the expense involved in making the improvement. Special assessments.

Such are the various forms of taxation used by the State and local governments of this country. Two other sources of income are now to be noted: charges and borrowing.

When a government owns property that is used by individuals or corporations, a charge is made that becomes a part of public revenue. Under this head come the tolls collected for the use of roads, bridges, and docks; the income derived from the rent of land and water privileges; and the charges made for water, for lights, and Charges.

for street-car transportation when the plants furnishing these conveniences are owned by municipalities.

Borrowing by States and cities.

The ordinary process by which a government borrows money is through the issuance of bonds. These are promissory notes bearing interest. It is customary to submit the question of issuing bonds to popular vote. The history of the debts incurred by many States shows the lack of wisdom sometimes displayed in this matter.* The bonded indebtedness of cities reaches an enormous figure. This seems necessary in most instances in order that future generations may share in the expense of public improvements which can be made most economically at the present time.

The appropriation of money.

Money brought into public treasuries by taxation and the other methods described is subject to appropriation by legislative bodies: town meetings, town boards, village and county boards, city councils, and State legislatures. Lack of wisdom, corruption, and extravagance may attend the making of appropriations by these authorities. Such abuses have brought about the enactment of constitutional restraints upon the character and amounts of appropriations that may be made. The debt limitations that are found in many State constitutions are similar restraints.

Auditing accounts.

The actual expenditure of public money is made either by committees of the legislative bodies just mentioned, or by executive and administrative officers. A good system of public accounts requires that these officers shall be directly responsible to the local governing board or to a special officer called comptroller or auditor. The accounts of every officer who handles public funds should be audited; the sources of each part of the money received by him should be correctly acknowledged. He should pre-

* The rage for internal improvements about 1830 furnishes an example. American History, 300, 311.

sent vouchers, or receipts, for every amount expended, and each expenditure should be properly authorized by law.

Supplementary Questions and References

1. In your State, (*a*) who assesses property? (*b*) how are assessments equalized? (*c*) by whom and when are taxes collected?

2. What is the present rate of taxation in your locality? What parts of this rate provide for local, county, State, and school taxes respectively? To what extent is there undervaluation? Does personal property bear its share of taxation? What remedies do you suggest for abuses that exist in these matters? What is fundamentally wrong?

3. What forms of taxation are used in your State besides the general property tax? How does each operate? Is it successful?

4. Examine the financial reports of your local, county, and State officers to ascertain the sources of revenue and the purposes of expenditure. In each case, what is the process of auditing accounts?

5. For general descriptions of State taxation see Bryce, I, chapter 43; Beard, chapter 31; Encyclopedia of Social Reform, chapter on Taxation.

CHAPTER VII

JUDICIAL TRIALS

THUS far in our study of government we have had in mind chiefly the processes by which laws are enacted, and executed or administered. If all men could agree upon the exact meaning of these laws, and if all were disposed to obey them, little more government than has been described would be needed. Because neither of these suppositions is true, another distinct department of government—the judiciary—becomes necessary.

Civil cases. Cases arise through differences in the interpretation of law and through its violation. There are two kinds of cases, civil and criminal. When one party to a suit (the plaintiff) brings action against the other (the defendant) for the protection or enforcement of a private right, we have a civil case. Some common examples of civil cases are those involving questions of the fulfilment of contracts; the relations of employer and employee; the possession of property; the collection of debts; and the validity of deeds and mortgages.

Criminal cases. In a criminal case it is charged that a wrong has been committed, in most instances against an individual, but of such a nature that the public peace, dignity, and security are also affected. These criminal acts are defined by law, and penalties have been affixed to their commission. At the same time the injured person is generally entitled to compensation, or damages, for the wrong he has received. Because public interests suffer from the commission of crime, the State is plaintiff in all criminal cases.

Arrest. The methods of procedure in ordinary cases are very similar throughout all the States. In a criminal case,

formal complaint must first be made before a justice of the peace or other judicial officer. A warrant for the arrest of the supposed criminal will then be issued. The arrest may precede these steps if the criminal is caught in the act. If the crime charged is a minor offence, the trial may take place at once in the justice or municipal court. A more serious offence, however, must be tried in a higher court—the district, circuit, or superior court of the county.

The grand jury.

The constitutions of most States provide that no person shall be held to answer for a criminal offence of a serious nature unless on presentment or indictment of a grand jury. In those States, the justice court merely examines into the evidence sufficiently to ascertain whether the accused shall be held until the next session of the grand jury. This is composed of from twelve to twenty-three citizens chosen by lot from the county. Its sessions occur at stated times and are secret. The district attorney presents to it evidence against persons supposed to have committed criminal acts, and witnesses are brought before it, who are required to give evidence. If there is probability of guilt in any instance, the person charged is *indicted;* that is, he is held for trial. He may be imprisoned, or released on bail. A bail-bond is signed by sureties, who agree to forfeit a certain sum of money if the prisoner does not appear at the trial.

Indictment.

Bail.

Presentment.

The arrest and examination of accused persons by a local justice need not precede the action of the grand jury. The district attorney often produces evidence against persons who as yet stand unaccused; if the grand jury indicts them, they are at once arrested. The grand jury need not await the action of the attorney, but may proceed to investigate supposed cases of wrong-doing. If it concludes that certain persons should be brought to trial for offences, they are *presented.*

In some States the grand jury has been dispensed with, for ordinary cases, and all proceedings preliminary to the trial are conducted in a justice court, or other court inferior to the one having jurisdiction to try the case. These proceedings are called the *preliminary examination*. The lower court is given authority to decide, after hearing the evidence presented, whether the accused shall be held for trial. In extraordinary cases, however, provision is made for calling a grand jury.

Petit and trial juries.

For the trial of cases in the principal court of a county, a *petit jury* is provided. The juries are summoned by *venire* and are obliged to be in attendance at the court during its session. When a case requiring a jury is called, a *trial jury* is selected by lot from the list of petit jurors. As the names of these are drawn, any juror may be *challenged* by either party to the case. He will be excused by the judge from serving on the trial jury if good reasons are shown. Each side is allowed to reject a certain number of jurors without giving reasons; that is, by peremptory challenges. The drawing of names must continue until twelve are secured who are eligible to serve in the trial of this case.

The process of trial.

In the meantime, witnesses have been *subpœnaed*, and the case begins by the direct examination of its witnesses by the prosecution. They are cross-examined by the defendant's attorney, and the testimony of the defendant's witnesses follows. Then come the arguments of the lawyers. The judge charges the jury as to the law that applies in the case, and it then retires from the court to decide what facts have been proved by the evidence. The *verdict* of the jury is followed by the *judgment* rendered by the court. If found guilty, sentence is pronounced against the prisoner, though the judge may, if the verdict grossly violates law or justice, set it aside. *Execution* of judgment is the carrying out of the court's decision by the sheriff or other executive officer.

Verdict and judgment.

Throughout these proceedings the presumption favors

the innocence of the prisoner; the State must prove, beyond a reasonable doubt, that he is guilty. The judge decides legal questions that may arise concerning the conduct of the trial. Either party may make objections to these rulings, and the defeated party may make its exceptions to the court's decisions the basis for a demand for a new trial, or for an appeal to a higher court on *writ of error*. The supreme court, or court of appeal, examines the questions of law that are involved, and either confirms or reverses the decision of the lower court. Appeals.

A civil case is begun by complaint of the plaintiff against the defendant. A *summons* is issued, calling the defendant to appear in court and make answer to the complaint. Cases involving small sums of money are tried in justice courts, and here the trial is sometimes without a jury, or with a jury of only six men. Cases involving larger amounts are tried in the principal court of the county, where the procedure is quite similar to that described in a criminal case. In the execution of a judgment against the property of a person, the constable or sheriff has power to seize and sell all property that is not exempt. Trial of civil cases.

It is sometimes claimed by one party to a case that the community where the case arises, or the judge before whom it is to be tried, is prejudiced to a degree that renders an impartial trial impossible. A *change of venue* may then be granted; the case is carried to another court, or another judge is called in to preside at the trial. Change of venue.

Many problems have arisen, in connection with the administration of justice, that demand the serious attention of citizens. Some of these we shall consider. (1) When the violation of law is a matter of common knowledge in a community, and no one is accused and held to answer, who is responsible? The basis of a warrant of arrest is a *complaint*, containing a specific accusation, and accompanied by the statement of the complainant, under oath, The enforcement of law.

that in his opinion the accused is guilty. Now, it is the sworn duty of officers to obtain the information upon which a complaint may be based, whenever they know or have reason to suspect that the law has been violated. If they persistently neglect this duty, the sentiment of the community should compel its performance. But at times the public conscience becomes so blunted that officers accept or even extort payments from law-breakers for shielding them from punishment.

Difficulties in law enforcement.

Not officers alone, but any citizen may make a complaint. But private citizens, particularly those who are most anxious to see the strict enforcement of law, find it difficult to discover sufficient evidence upon which to make a sworn statement. Besides, the prosecution of criminals by persons who do not directly suffer injury from the criminal acts, is likely to cause criticism that is distasteful and hard to bear. It is much easier for the average citizen to let such matters alone, and attend to his own private business. In the meantime, public funds may be stolen, or the health of the community threatened, or its youth put in danger of moral corruption—all for lack of a complaint, specific in its accusations, and supported by definite evidence. These reasons most frequently answer the question, "Why is not the law enforced?" At the bottom, it is a question of public conscience. In communities where a low moral standard prevails, a few determined leaders, willing to sacrifice time, labor, and comfort for the public good, have sometimes aroused the entire public to action. No service to the community could be more commendable than this.

The law's delays.

(2) Other causes for discontent with our judicial system arise in connection with court procedure. There is sometimes the delay of justice through the postponement of cases for trivial reasons. Criminal cases may drag along for months until public interest subsides. In civil

cases a wealthy litigant may secure postponements until the resources of his poorer opponent are exhausted.

Technicalities of the law.

(3) The course of a trial in its various stages and sometimes the final decisions of judges are too often determined upon grounds that are purely technical. That is, the procedure or the decision follows some arbitrary rule, rather than doing justice according to the facts in the case. Many criminals escape punishment in this way.

Legal complications.

(4) Much evil in trials comes from the sharp practices indulged in by attorneys. These men are sometimes employed by those who can afford to pay the highest salaries, apparently for the purpose of finding loop-holes in the law and defeating its real purpose. This evil, as well as others mentioned, are possible partly because our legal system and our methods of conducting trials are unnecessarily complicated.

(5) Miscarriage of justice can in some cases be charged against judges, but this is quite exceptional. However, the short terms and small salaries of these officers subject them frequently to temptation.

The jury system.

(6) Numerous evils have crept into the administration of the jury system. The local officers who make the original lists from which petit jurors are drawn, are sometimes influenced in the selection of names by political considerations or by the pressure of business interests. In this way a jury may be "packed" in favor of one of the parties to the suit. The old method of making jury lists has been superseded in some States by the appointment of jury commissions composed of prominent citizens of the county, who make the lists under supervision of the court. Again, many citizens who are most competent to serve on juries, shirk the duty, giving trivial excuses or paying fines to escape performing the service. When a panel of petit jurors is exhausted, *talesmen* are summoned from the by-standers—a practice which is apt to admit

Some evils.

men who are wholly unfit for jury duty. Cases of direct jury bribery are, unfortunately, too common, especially in large cities. They are also very difficult to detect. Public opinion should be extremely intolerant of this crime.

It is almost a universal custom to require unanimity in the decision of juries; * thus one man may cause a case to fail of decision. While this is generally considered a wise provision in criminal cases, it many times results in the defeat of justice.

Good features of the jury system.

It will be noticed that many of the evils mentioned in connection with the jury system are accounted for by bad administration of its details. The central idea of the system—the participation of citizens in the legal process of determining justice—is of very ancient origin. It was brought from England by the colonists, embodied in their legal codes, and inherited by both State and National governments. The publicity which trial by jury gives to legal procedure, and the educational influence upon those who participate in its workings, are advantages of great weight in its favor. Moreover, it is so firmly fixed in our legal and social fabric that its abolition would be a most radical measure. This fact renders imperative the correction of abuses, wherever they may be found, and the restoration of a pure ideal, in order that the jury system may not become a decadent institution.

Lynch-law.

No failure of government is more deplorable than the failure of justice. There have been times when communities, exasperated by the feeble efforts of officers and courts to bring violators of law to justice, have resorted to "lynch-law" as a remedy. This sets an example of lawlessness, the evil influence of which far outweighs any attendant good.

* In Nevada, Utah, California, and a few other States, a decision may be rendered by three-fourths of a jury in a civil case. In Idaho, five-sixths of the jury may render a decision.

Many legal controversies never appear in courts, because they are adjusted between the parties concerned through the efforts of the attorneys. Other disputes are voluntarily submitted to arbitrators by whose decision the disputants agree to abide. If more cases could be settled out of court, much expensive litigation would be avoided, and the cause of justice would not suffer. Efforts have been made to establish courts of conciliation in some States, but with little success. Arbitration.

Supplementary Questions and References

1. What guarantees are contained in the constitution of your State safeguarding the rights of accused persons? Are similar rights secured in all countries?

2. As illustrating the process of trial, obtain and fill out blank forms for complaint, warrant of arrest, search warrant, subpœna, venire, execution, indictment.

3. Is the grand-jury system the best method of bringing offenders to trial?

4. What is the established method of selecting petit jurors in your State? Can you suggest improvements? Visit a court while in session, and observe the selection of a trial jury; also, the examination of witnesses. What fees are paid to witnesses and jurymen?

5. Find the meaning of the following terms: Damages, costs, stay of execution, injunction, certiorari, habeas corpus (see p. 209), quo warranto, mandamus.

6. Topics in this chapter are treated in Bryce, I, chapter 42; Beard, chapter 26. Encyclopedia of Social Reform.

7. President Taft. Delays and defects in the enforcement of law in this country, N. Am. Rev., 187 : 851–861; see also Outlook, 86 : 321–327. Arena, 32 : 471–480; Atl. Mo., 97 : 502–508; World's Work, 13 : 8221–8226.

8. The jury system, Rev. of R's, 37 : 607–608; Arena, 33 : 510–513.

9. The swiftness of justice in England, N. Am. Rev., 188 : 26–39.

CHAPTER VIII

CHARITABLE AND PENAL INSTITUTIONS

The support of paupers.

THE support of the destitute falls first upon their near relatives; when this resource fails, public charity becomes necessary. Much the greatest part of public relief is given by local governments. Where the town system is strong, the work is in charge of the town board or of a special town officer. In the South the county commissioners, or other county officers, administer relief. In many States, particularly in the West, both town and county are interested.

Out-door relief.

Two general methods of dispensing alms are practiced. (1) Out-door relief means the giving of aid at the home of the pauper. This is a convenient method in cases of temporary want, and in the relief of persons who are partially self-supporting. Many local governments make a practice of giving goods, or orders for goods, to paupers. In rural communities, where the circumstances surrounding every family are well known, this method of relief works satisfactorily. But in cities, and in the administration of relief by county officers, it is possible for individuals to impose upon the public by securing aid when it is not deserved. The evil here is not only that of stealing from the public treasury, but also the evil of pauperizing the individual and the family. This is a place for investigation and reform in many communities. Sentimental ideas of charity and loose business methods sometimes cause the harm of out-door relief to over-balance the good accomplished.

(2) In-door relief. Towns frequently pay for the support of their poor in private houses; and paupers are sometimes bound out to service on contract. But almshouses, or poor-houses, become necessary when the number of paupers is large. These are most usually maintained by counties and cities. When a poor-house is located on a farm, and when the inmates are kept employed in farming and other industries, these institutions become most helpful, and may also be partially or wholly self-supporting. The establishment of a poor-house sometimes has the effect of decreasing the number of paupers who apply for aid from a county. In-door relief.

Within recent years it has been generally recognized that children should not be kept in poor-houses with adults, since such surroundings are exceedingly demoralizing to child-nature. There are often State schools for dependent children, where education and some form of industrial training are provided for the inmates. Cities also have parental schools. Efforts are made to secure the adoption of these children, when of suitable age, into families. Dependent children.

For the sick and injured, medical attendance is provided by local governments. In the cities, hospitals are maintained at public expense. Hospitals.

The question of providing for the unemployed in times of temporary distress is particularly difficult in the large cities. It seems necessary, at times, to establish free soup-kitchens and agencies for the distribution of food and clothing. Cities have sometimes provided employment upon public works in such cases. The unemployed.

It is often difficult to distinguish between the homeless seeker for employment and the professional tramp, who might rather be included among the criminal classes. But in most places both are treated in the same way; that is, they are fed at the back doors of homes where they apply for help. The local government frequently gives The tramp problem.

these vagrants food and lodging and then sends them on to the next town. Or, they may be arrested for vagrancy and sentenced to a term of imprisonment. Often the city or county keeps them during the winter in a poor-house or municipal lodging-house and releases them as warm weather approaches. None of these methods of treatment is satisfactory because no effort is made to test the vagrant's desire to obtain work, or to deter him from continuing to lead a life of laziness and dependence on charity. Cities that have established wood and stone yards, in which the applicant for assistance is compelled to earn at least a part of his support, find the number of tramps considerably decreased.

The support of the poor seems, at first glance, one of the simplest operations of government, but we have seen that numerous difficulties are involved. How can we aid the deserving poor, and at the same time avoid making them less willing or able to support themselves? The same question is, or should be, prominent in all cases of private charity; for if charity is unwisely given, it pauperizes the recipient and makes the evil we are trying to cure greater, rather than less.

Defectives. By the defective classes is meant the blind, deaf, and feeble-minded. These unfortunate persons are educated in public institutions. Public control of defectives is necessary on the grounds of education, public health, and public security. Because of the relatively small numbers included and the special treatment that is required, it is most economical for the State, rather than for the local governments, to care for them. Hence we have the excellent State institutions for the blind, the deaf and dumb, the insane, and the feeble-minded.

The insane. In no way can we measure the growth of the humanitarian spirit during the nineteenth century better than by contrasting earlier with present methods of treating

the insane. Formerly they were regarded as criminals, confined in foul prisons, and brutally treated. Insanity is now regarded as a disease, and scientific treatment results in the curing of a large proportion of the cases. Laws quite uniformly require judicial procedure for the committal of an insane person to an asylum. These institutions are conducted either by the local or the State government. In State hospitals the conditions are most favorable for the treatment of those who should be under the physician's care.

The feeble-minded.

Within recent years a score of States have established asylums for feeble-minded children, where they receive proper educational and industrial training. In a few States there are homes for epileptics.

State boards of charities.

It was formerly usual to have each charitable institution of a State administered separately by its board of directors or trustees. At present, however, central boards of charities exist in most States. These are of two kinds: (1) Advisory boards, that merely inspect and report recommendations, each institution having its own board of trustees. Such boards are most common, and are composed of unsalaried officers. (2) A board of control may administer the entire charitable system of the State, and appoint a superintendent for each institution. Such boards are also given power to inspect the construction and control of local poor-houses, jails, and asylums. The officers of these boards are salaried. The advantage of the system of central control is that through it the influence of high ideals and scientific methods may be felt in the local institutions.

Old methods of punishment.

Methods of punishing criminals have undergone great changes since the establishment of the older State governments. At the beginning of the nineteenth century the clipping of ears, branding with a hot iron, the stocks, and the pillory had not entirely disappeared. Prisons

were foul pens. But the barbarous mutilation and public exposure of early times have passed away, and prisons are now conducted with some regard to the health and comfort of the prisoners. Instances are found in the excellent provisions for securing the good health of the inmates; for it is recognized that an unsound physical condition is often the foundation of a criminal nature.

Modern prisons.

We now reject that theory of punishment which considers its only end to be retribution. The principle is generally accepted that for the protection of society the criminal must not be merely confined and punished, but *reformed* as well. Some practices introduced into State prisons indicate the progress of this idea. Prison libraries, reading-rooms, and study classes give convicts a chance for mental improvement. Very commonly, good conduct on the part of the prisoner will result in a reduction of his term of imprisonment. It has been urged that no fixed term of confinement should be set, but that the convict should be held in prison, until, in the judgment of the authorities, he is fit to be at large. This system is called the *indeterminate sentence* and has been generally adopted in reformatories, besides applying in some States to prison sentences.

Release on parole.

In some States the prisoner may be released on parole or probation. He must find employment, avoid bad associations, and report periodically to a parole officer.

Reformatories.

Great evil is wrought through the association in prisons of first offenders and persons of slight criminal tendencies with hardened criminals. For this reason we have State reformatories and industrial schools for boys and girls. Here they are given an education and taught useful trades. Recently, in some States, the younger and less hardened offenders among the men have been assigned to separate institutions where conditions are made as favorable as

possible for their reformation. If they show themselves incorrigible, they are returned to the State prison.

Juvenile courts.

Recent years have seen the growth in cities of juvenile courts. It is recognized that most children in committing illegal acts are not intentionally criminal. The child's home, his training, and his environment are responsible for his misconduct. It results from misdirected energy which cannot find a proper outlet because of the lack of opportunity to play.* To arraign him in the police court is not only injustice, but may lead to further steps in a criminal career. "In the juvenile courts children are taken out of a purely criminal process and committed to one which is educational, and the court becomes part of the child-saving community."

Systems of prison labor.

It is generally agreed that the confinement of prisoners without occupation is both cruel and demoralizing. Several systems of prison labor have therefore been tried. 1. The *lease system*, common in some States, permits the sale of prison labor to the highest bidder. The prisoners may be employed either within or without the prison, and are subject to the control of their employers. In many instances they are employed in working mines and quarries, living in penal camps, where one would scarcely expect to find them surrounded by the proper reformatory influences. 2. Under the *contract system* the labor is performed within the prison, under the usual prison discipline. Some form of manufacturing is carried on, the contractors furnishing the foremen, the materials, and to some extent the tools and machinery. They pay a stipulated price for each day's labor performed by the prisoners. 3. The *piece-price system* leaves the work of prisoners under the supervision of prison officials, the contractors agreeing to furnish the materials and to pay a specified price for each piece of the finished product. 4. Under the *public account system* the State conducts the entire process of manufacture, as an individual might, disposing of the product on the market.

*"Over half the arrests of children in New York city are for playing games—in the streets." Outlook, 97 : 135.

The prevention of crime and pauperism.

In the administration of charitable and penal laws we are at present concerned chiefly with relief, punishment, and reformation. But the systems employed too often tend to perpetuate the evils we wish to cure. With the spread of more rational ideas concerning pauperism and crime, public attention must be directed toward the *prevention* of both. As population becomes more dense in the United States, the problems assume greater proportions. We have found State control the most satisfactory method of managing the greater part of the curative processes; it may be suggested that the proper preventive measures are largely matters for private and local support. But the further study of this subject comes more properly within the field of sociology than within that of government.

Supplementary Questions and References

1. What methods of public and of private charity are employed in your community? Is there careful examination into the merits of cases? Is there duplication of charities? Which, the public or the voluntary work, is on the whole more effective?

2. What is your remedy for the tramp problem? See Rev. of R's, 37 : 206–212; 39 : 311–316.

3. Outline the system of State charities in your State. Can you suggest improvements?

4. Many old forms of punishment are described in Earle, Curious Punishments of By-gone Days.

5. What was the condition of prisoners at the beginning of the nineteenth century? McMaster, History of the United States, I, 98–104. When did prison reform come about? American History, p. 304.

6. What are the effects of exposing offenders to public gaze?

7. Do reformatories reform? Outlook, 89 : 806–810.

8. What is the penal system of your State? Look up the reports of State officers having charge of penal and charitable institutions.

9. The indeterminate sentence, Indept., 58 : 1052–1056.

10. For topics in this chapter see Encyclopedia of Social Reform; Wright, Practical Sociology; Reports of Conferences of Charities and Corrections.

CHAPTER IX

EDUCATIONAL SYSTEMS

THE maintenance of public schools is a function of the State governments. Though the National government has aided in this work, as we shall see, its authority does not extend over our systems of elementary and higher schools.

School systems are mainly under local control.

The States have left the regulation of school affairs chiefly to the local governments—counties, towns, cities, and school districts; but they still exercise more or less control over the school systems. There is great variety of arrangements for the conduct of school government in the different States, so that a general description is almost impossible. Three types may, however, be distinguished.

The district school system.

(1) Where the pure district type exists, each district supporting a single school, the chief authority resides in meetings of voters. These are similar to town meetings, but are held at a different time, since school business is kept distinct from town affairs. A small school board is elected, and school taxes are levied.

The township system.

(2) The town or township system gathers all the schools of a town under one authority; this may be a town meeting of voters for school purposes, or, districts may be retained as subdivisions of the town, with a school in each.

The advantages of this plan.

The township school system has some points of advantage, since under it there are fewer schools and these can be better graded and equipped. Higher salaries and better teachers are other advantages. Sometimes the township has but one school, centrally located. The difficulty of the school's distance from the homes of the pupils has

been overcome in some States by the transportation of children at town expense. This is cheaper than the maintenance of more schools, and the children gain advantage through being members of schools having larger attendance.

(3) In the Southern States, the county is divided into school districts, and county officers direct school affairs.

County supervision of schools.

Where the district and township systems exist, it is usual (elsewhere than in New England) to have a county superintendent or board of education from whom teachers obtain certificates. These officers also exercise greater or less power of supervision over the schools of the county.

State supervision

In nearly every State of the Union there is a State superintendent, or a State board of education, or both. Methods of selection and organization are various. The superintendent or the board has authority to interpret and enforce the general school laws of the State; and to supervise, in a general way, the school system. An additional function is "the higher and far more important work of directing educational movements, of instructing the people, and of creating public opinion and arousing public interest."

City school systems.

In school affairs, as in other matters of local government, each large city has its peculiar system. In many cities, the school system is managed as a separate department, and its workings are almost independent of the central legislative and executive machinery of the city. There are special times for school elections, and the school board is not responsible to either council or mayor. In other cases, different degrees of relationship exist between these authorities. School systems and courses of study are most highly developed in cities; here, too, equipments are most complete.

Politics in school affairs.

Among the difficulties encountered in the management of school systems, two may be mentioned. (1) The introduction of party politics into school affairs is inexcusa-

ble. The popular election of county superintendents, for instance, has a tendency to make the office political, rather than professional. Often there is no educational qualification prescribed for this officer. The selection of members of the board of education in a city for political reasons may be detrimental to the best interests of the children.

The confusion of business and professional functions.

Another source of difficulty is the confusion of the business and the professional sides of school government. Boards of education are more competent to supervise business affairs, and so generally leave the determination of courses of study and methods of teaching to educational experts. But other professional affairs, such as the employment of teachers and the selection of text-books, too often remain within the jurisdiction of the board. This body frequently acts under the advice of the superintendent of schools, but in other cases professional interests are subordinated to business or political considerations.

Special features of school systems.

The policy of establishing public kindergartens in cities is spreading steadily. Manual training, domestic science, and commercial courses are being adopted and trade schools have been introduced in some cities. Separate schools for truants and for backward pupils are features of a few city systems. In most States there are compulsory education laws, applying uniformly to rural and city populations.

High schools.

Excellent systems of high schools have been developed in recent years. Those located in the large cities have their own courses of study and methods of management. But the high-school systems of villages and small cities have been fostered under uniform State laws.

The people of the United States are lavish in their expenditures for public education. In the year 1909 the entire amount of money raised for the support of the common schools was $381,909,526.

Whence, it may be asked, was this enormous revenue derived? From several sources.

(1) The greatest part, $259,000,000, came from local taxation. This emphasizes the fact, already noticed, that local governments have the largest share in the control of our common-school systems.

(2) About $58,000,000 was derived from State taxation. The proportions of State and local taxes vary greatly in the different States. Some levy no State tax whatever for this purpose. Sometimes a certain per cent. is levied for school purposes on each dollar's worth of property in the State. This method of deriving school revenue is commendable because, in the poorer sections of a State, lack of revenue from local sources may keep the schools upon a low grade. The State school money can be distributed in such a way as to aid these poorer districts.

(3) The amount of school revenue yielded from miscellaneous sources, State and local, was $42,000,000.

(4) Permanent school funds and rents form the fourth source of revenue—$22,000,000.

Origin of school funds.

The origin of these funds must now be accounted for. When the States laying claim to the territory north of the Ohio River and east of the Mississippi ceded their claims to the United States, Congress passed the "Land Ordinance of 1785" containing the following provision: "There shall be reserved the lot number sixteen of every township for the maintenance of public schools within the said territory." * The same purpose is seen in that provision of the Ordinance of 1787 which declared that "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." Nowhere do we find better stated the ultimate purpose of public education.

* American History, pp. 189, 280–281; Hinsdale, The Old Northwest, 259.

National land grants.

The policy thus asserted was carried into execution whenever any State in which the United States owned lands was admitted to the Union. In each case section sixteen of each township was set aside for the support of the common-school system. Since 1848 each new State has received for this purpose both section sixteen and section thirty-six of every township. When, therefore, these lands were sold to settlers, the proceeds were gathered into permanent school funds; these were invested in interest-bearing securities, and the income derived therefrom is annually distributed among the schools.

Other aids to public schools.

These funds have been increased in various ways. To most of the Western States Congress gave 500,000 acres of land, to be devoted, originally, to the support of internal improvements. Some of the States have dedicated the proceeds of these lands to educational uses. Many States have received swamp and salt lands, which in some cases have gone to increase school funds. Since the National government owned no lands in the original States, they have not been benefited by its generosity in the donation of lands. But many of these States have set aside their own wild lands and in other ways have established permanent school funds.

Higher education.

The colleges and universities and technical schools of the United States number 493. Of these, the greater number are supported by endowments and donations from private sources. Most States, particularly in the West, tax the property of their citizens to support State universities. The Federal government has been as generous in the support of higher education as in the aid granted to the common schools. When the sale of lands in the Northwest Territory was authorized, Congress provided that not more than two complete townships (seventy-two square miles) of land should be given to each State therein erected for the support of higher education. Every new

State in which the United States owned land has reaped the benefit of this policy, some having received more than two townships. In some of the older States, these lands and the common-school lands were sold at very low prices. Bad management in this respect, and in the care of the funds thus established, has caused immense loss to these States. The newer States, profiting by this experience, have been more judicious. Federal aid.

In 1862 Congress granted to each State of the Union, and to each new State to be admitted later, as many times 30,000 acres of land as it had Senators and Representatives in Congress. The income of the funds arising from the sale of this land was to support colleges of agriculture and mechanic arts.* In 1887 each State was given $15,000 annually for the support of agricultural experiment stations. By a law of 1890 this amount was to be increased by $1,000 each year until the appropriation reached $25,000 for each State. This law provided that this money "shall be applied only to instruction in agriculture, the mechanic arts, the English language, and the various branches of mathematical, physical, natural, and economic science, with special reference to their applications in the industries of life and to the facilities for such instruction." Technical schools are in this way aided in many States. Agricultural colleges.

In connection with the systems of higher education we find professional schools of various kinds. These include colleges of law, medicine, dentistry, pharmacy, veterinary medicine, and normal schools. Commercial and business courses are a feature in a large number of colleges, universities, and high schools. Professional schools.

* American History, p. 389.

Supplementary Questions and References

1. Study the organization of the school system in your State. (*a*) What is the unit of school taxation? Of administration? Should these be larger or smaller?

(*b*) What officers conduct school affairs? Can you suggest improvements in the system?

(*c*) How is school supervision secured? Is it effective? In what ways does the State control the common-school system?

(*d*) What are the laws of the State upon the subject of compulsory education? text-books?

(*e*) Study the revenues and expenditures of your school system. Comparison with other States in different sections of the country is possible from the reports of the Commissioner of Education.

(*f*) Ascertain the amount of Federal aid received by your State for education.

2. Students may get ideas for the graphic representation of educational statistics from the Report of the Commissioner of Education, 1897–98, pp. lxxxvii–xcvii.

3. History of land grants for schools. Boone, Education in the United States, 88–93; Hart, Essays on American Government, 244–247.

4. Education in colonial times. American History, 94, 97, 98, 133; Commissioner of Education, 1896–97, II, 1165; McMaster, History of the United States, I, 24–27; Earle, Child Life in Colonial Days; Lodge, Short History of the English Colonies in America, 74–76, 464–467; Fiske, Old Virginia, II, 245–253; Boone, Education in the United States, 9–19.

5. Use of lotteries in support of schools. Boone, 87–88.

6. Recent educational progress. American History, 522–523; Eliot, Good Urban School Organization, Indept., 56 : 416–422.

CHAPTER X

THE EXERCISE OF THE POLICE POWER

Meaning of the term police power.

We are accustomed to associate with the word "police" the idea of a body of officers to whom the enforcement of law is entrusted. But the legal significance of the word is much broader. In this sense we speak of the police power of a State as its system of internal regulation "by which persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health, and prosperity of the State," *i. e.*, of the citizens. It is assumed that all property of the State is held subject to those general regulations which are necessary for the common welfare. So, too, in the conduct of private business and in the family and social relations of life, citizens are not entirely free to determine their own conduct; but through its police regulations the State insures "to each the uninterrupted enjoyment of his own rights so far as is reasonably consistent with a like enjoyment of rights by others." *

We are most familiar with the police regulations that are calculated to preserve public order and prevent offences against persons and property. A number of other instances in which the police power is used will now be noticed.

Health and sanitation.

(1) Individuals are subjected to governmental control for the preservation of public health. Until recent years, health and sanitary laws were matters of local government only; but at present State boards of health are almost universal. The establishment of these boards has

* Cooley, Constitutional Limitations, 704, 706.

made the regulations upon this subject more uniform; at the same time the administration of laws has become more thorough. For popular ignorance and prejudice often prevent the execution of adequate sanitary measures. This is especially true when contagious diseases prevail. Stringent regulations then become necessary for disinfection, isolation, and quarantine. Local boards of health exist in the cities, but they are not so common in rural districts. These boards are made subject to control by State boards.

Governmental activity in care of public health.

In the interest of public health, private property may be declared a nuisance and removed or destroyed at private expense. Many cities have officers who inspect plumbing and appliances for sewage disposal. The chemical examination of water supplies reveals an important source of disease. A number of cities have forbidden expectoration in street-cars and public places. The establishment of hospitals and sanitariums for tuberculous patients has been begun in some localities. Health regulations also extend to the examination of horses and cattle and their condemnation when diseased.

Recently much attention has been given to the inspection of foods and of the places where food products are made.* Milk and dairy inspection is common. The analysis of canned and packed foods is necessary because an increasing proportion of our foods are prepared in factories, instead of in the home.

Protection from danger.

(2) The public is protected from danger in other ways than by these health regulations; for instance, by laws requiring that buildings containing halls for public assemblages shall have doors that swing outward, and by laws compelling the erection of fire-escapes on tall buildings. In cities, wooden structures may not be built

* The National government has taken up this subject in its pure food laws. See p. 178.

within the "fire limits" that are prescribed by ordinances. Private property may be destroyed to prevent the spread of fire.

The law regulates certain kinds of business on the ground that carelessness might render them injurious to individuals or to the public. For this reason the sale of explosives, fire-arms, and poisonous drugs is accompanied by legal restraints. So in the use of a public wharf or a market-place, the interests of the few must be subordinated to the welfare of the greater number.

Travel and commerce.

(3) The conduct of individuals upon public highways is subject to legal control; the law may fix the rate of speed and require vehicles to turn to the right. Travel by water is likewise regulated. The States declare certain rivers and lakes within their limits to be navigable waters; these become highways, open to the public.* Consequently, such matters as the conduct of vessels, the building of dams, bridges, and docks, are regulated under the police power of the States.

Common carriers.

(4) Persons and corporations are subject to police regulation because of the nature of the service they render, as in the case of the "common carriers." A common carrier is "one who holds himself as a carrier, inviting employment by the public generally. The most familiar classes of common carriers are railroad companies, stage coach proprietors, expressmen, truckmen, ship-owners, steam-boat lines, lightermen, and ferrymen." Any person falling within this definition "is bound to serve without favoritism all who desire to employ him, and is liable for the safety of goods entrusted to him, except by losses from the act of God or from public enemies, or unless special exemption has been agreed upon; and in respect to the safety of passengers carried he is liable to injuries

* But if they are used in interstate or foreign traffic, they are subject to control by the National government. See p. 176.

which he might have prevented by special care" (Century Dictionary).

The control by States of public utilities.

The most important common carriers are the railroads, and recently there has been a tendency to regulate them more stringently through State commissions. In some States these bodies have the power to fix the maximum rates that may be charged for freight and passenger traffic. Other public utility industries, such as those furnishing water, lights, and street-car services in cities are made subject to control by State authorities in some cases. The same may be said of telephone and telegraph companies. Legal restraints are imposed upon these businesses, not only because they are in the nature of public industries, but also because they tend to become monopolies, and hence may abuse their power.

The conservation of natural resources.

(5) Within recent years it has become apparent that our great industrial growth has resulted in the rapid exhaustion of our natural resources—soil, forests, mines, and water-power; and that the supply of the products from some of these has passed into private hands. Hence has arisen the demand for the *conservation*, and for State control, of the remaining resources that are still public property. This involves such projects as the making of forest reserves; the construction of reservoirs for irrigation purposes and for regulating the flow of rivers; the taxation of mineral products; the policy of leasing water-power sites, instead of granting them outright. Such measures, adopted by many of the States, show an interesting extension of State functions.* It was to discuss the general subject of conservation that a conference of governors met at Washington in 1908. (See American History, 523.)

Restricted employments.

(6) Certain employments and practices are forbidden or placed under restrictions because they are in them-

* The National government has entered upon a similar policy. See p. 285.

selves immoral. The pursuit of gambling in its various forms falls under this head. The State interferes to prevent the infliction of cruelty upon animals because acts of this nature are immoral; and also because the moral sense of people is shocked by the sight or knowledge of their occurrence. Partly on the ground of the immorality of intemperance, and partly because of the dangers with which the public is threatened through this vice, the manufacture and sale of intoxicating liquors is the subject of State control.

Licensed employments.

In the regulation of employments, for whatever reason, it is customary for the State to require licenses. This is for the purpose of preventing persons from entering these employments indiscriminately. Accompanying the license is a fee, the amount of which may be (1) simply sufficient to cover the expense of inspection and regulation; or (2) it may be large enough to discourage or even to render impracticable the pursuit of the licensed business.* In its legal aspect, then, a business which is licensed is presumed to be legitimate, but to require regulation in order that the public may not suffer from abuses that may arise in connection with it.

Liquor laws.

The laws regulating the manufacture and sale of intoxicating liquors are very numerous. Some of the most common of these prohibit the sale to minors, to intoxicated persons, and to habitual drunkards; also, the sale of liquors is forbidden on Sunday, on legal holidays, election days, and during certain hours of the night. The following restrictions are found in different States. There shall not be more than one saloon to a certain number of inhabitants. There shall be no saloon within certain dis-

* The term "license fee" is often attached to taxes; *e. g.*, the license fees paid under United States law on the manufacture and sale of liquors. The idea here is simply the gaining of revenue. Many States require license fees with the sole purpose of raising revenue. See p. 59.

tances of public schools, colleges, churches, or parks. Screens and all obstacles to a clear view of the place where liquor is sold are prohibited. In some States liquor must be sold only with eatables or in connection with lodging-houses and hotels. In other States liquor must be never sold under these conditions. The consent of the owners of property in the same block or near the saloon is sometimes required. Liquor dealers are made responsible for damage caused by an intoxicated person who is known to be dangerous when under the influence of liquor.

Prohibitory laws.

The governmental regulation of this business has extended in a number of States to the absolute prohibition of all manufacture and sale of intoxicating liquors. Prohibitory laws "are looked upon as police regulations established by the legislature for the prevention of intemperance, pauperism, and crime, and for the abatement of nuisances."*

Under the system of "local option" that exists in most States, each local government (town, village, and city) may settle the question of liquor selling for itself. Sometimes "resident districts" in cities are given the privilege of excluding saloons. Recently "county option" has become an issue in many States. Where adopted, this gives the voters opportunity to refuse licenses in an entire county; but if the majority favor licensing, the local units may still vote to be "dry." †

Enforcement of prohibition.

The difficulties in the enforcement of prohibitory laws may be grouped under several heads. (1) In certain localities, particularly in cities, we find the lack of public sentiment favorable to their enforcement. In these places officials have sometimes engaged systematically in the practice of fining or taxing saloon-keepers without attempting to enforce the prohibitory laws. (2) There is

* Cooley, Constitutional Limitations, p. 718.

† It is estimated that in 1909 two-fifths of the territory and almost one-half of the people of the United States were under prohibition laws.

great difficulty in preventing the importation of liquors into prohibition States. (3) Since the use of alcoholic liquors for medicinal and mechanical purposes is exempted from the prohibition, druggists are licensed to dispense them under prescription by a physician or some similar regulation. This leads to violation of the law, drug-stores sometimes becoming saloons in everything but name. (4) There are a multitude of devices for evading prohibitory laws, many of which involve official perjury and corruption.

High license.

High license means the exaction of large license fees for the purpose of discouraging the liquor business. The combination of local option and high license exists in some States. The fees are in some cases $500 or more. Saloons in cities may be required to pay more than those in towns of the same State, $1,000 being not an unusual amount for the former.

The granting of licenses is most frequently in the hands of the local governing board. Bonds, which are liable to be forfeited for non-compliance with the law, may be required of the licensee. Sometimes special commissioners are given charge of the entire matter of granting and revoking licenses. The exercise of these powers by officers opens another avenue through which corrupt influences enter politics. The control of the liquor business by licensing authorities and by the police should receive the constant attention of citizens. In no other way will the enforcement of law be secured.

State control of banking and insurance.

(7) The insurance business and that of banking furnish other instances of State control exercised over private enterprises. Among the administrative officers of the State is the Insurance Commissioner. It is his duty to enforce the State laws that regulate the manner in which insurance companies shall conduct their business. The protection of the public against fraudulent and careless busi-

ness methods is seen also in the State banking laws. Inspectors are sent to investigate the condition and methods of banks that operate under State laws.* In a few instances laws have been enacted under which banks are obliged to contribute small sums annually to a guarantee fund; this fund is drawn upon in case any bank fails, as a source from which its depositors are reimbursed. This is called "the guarantee of bank deposits."

Supplementary Questions and References

1. Make a list of the topics in this chapter upon which you know of some law in your State. Are these laws beneficial? Are they enforced?

2. Upon the recent industrial advance and changes in methods, see American History, 516–517, 520, 521, 523.

3. State control of water-power, Rev. of R's, 39 : 57–62; Soil erosion in the South, *ibid.*, 39 : 439–443; Water-powers of the South, *ibid.*, 41 : 68–76; New York's conservation of water resources, *ibid.*, 41 : 77–87; Forestry in the States, *ibid.*, 41 : 465–466.

4. The liquor problem and prohibition, Rev. of R's, 36 : 328–334; 749–750; 37 : 468–476; 480–481; Arena, 33 : 134–142. In the South, Atl. Mo., 101 : 627–634; Outlook, 86 : 943–944; 947–949.

5. Railway regulation by States. Indept., 68 : 905–910 (Wisconsin); Rev. of R's, 34 : 346–347 (Texas); World's Work, 13 : 8333–8337.

6. Bank deposit guarantee in Oklahoma, Rev. of R's, 39 : 499–500; *ibid.*, 37 : 340–347; Indept., 65 : 418–419.

7. Regulating the milk supply, Rev. of R's, 36 : 360–362; 585–593.

8. The conference of Governors, Outlook, 89 : 138–140; 145–148.

* National banks operate under United States law. See p. 187.

CHAPTER XI

LABOR LEGISLATION

THE laws that fall under this designation are very similar in their general purpose to those through which the State exercises its police power. It will be convenient to consider these laws as grouped into several classes.

Labor of women and children.

(1) There are laws that relate to the age of workers and the hours of labor. Attention was early called to the necessity for labor legislation because of the employment of young children in factories and the long hours of service for women and children. State laws now quite generally prohibit the employment of these persons for more than ten hours a day, or sixty hours a week. The employment of children in factories and mercantile establishments is made illegal, though the age limit varies from ten to fourteen or sixteen years. Accompanying these laws are requirements that children be given a minimum number of months' schooling each year.

There has been much agitation in favor of a legal eight-hour day for workmen. The employees of the National and of many State governments work under this rule. In private employment, freedom of contract is generally allowed for adult male laborers; but there are exceptional industries in which the law limits the number of hours, either for the benefit of the laborer, or for public safety. Mining and railway employment are examples of such industries.

Safety and comfort of employees.

(2) The second class of labor laws specify the conditions under which labor may be carried on. They regulate the manner in which factory buildings shall be

constructed and ventilated; the lighting and sanitation of these buildings must conform to certain requirements. Under certain conditions, seats must be provided for employees. The hours for meals must be reasonable. Sweat-shops are prohibited. Steam boilers are inspected and engineers are examined. Machinery must be so placed and guarded that employees will not be compelled to work in dangerous situations. Mines, in particular, are subject to State laws intended to secure the safety of miners.

Wages.

(3) The relations of employers and employees, and of both to the public, form a very important but complicated subject of legislation. There are laws regulating the time for the payment of wages, and prohibiting the truck system. Other laws forbid blacklisting and boycotting. The liabilities of employers for damages, because of accidents in which employees suffer, are fixed in many States by legislation.

Trade unions.

Trades unions and their members have received legal protection in various ways; for instance, laws prevent the discharge of employees for the sole reason that they are members of these organizations.

Strikes.

One of the most difficult subjects of legislation in this field is that relating to labor conflicts. Laws which undertake to control strikes and lock-outs are being supplemented by others calculated to prevent these labor wars.

Arbitration of labor disputes.

In about one-half the States, boards of arbitration and conciliation have been established. These boards are empowered to offer their services to aid in the settlement of disputes between employers and employed, and to investigate and report facts concerning strikes. But nowhere in this country has the compulsory arbitration of labor disputes been made legal. When a strike occurs in a business that is a public utility (*e. g.*, a street-car line), it would seem that the interests of the public should be guarded in such a way as to secure the continuance of the

service by compulsory process, if necessary, until the dispute is settled.

Injunctions.

When damage to property or to business interests has been threatened by strikes, courts have granted injunctions which forbid the strikers doing certain acts, such as damaging property or intimidating others who wish to work. When an injunction is violated, the judge who issued it may sentence the guilty person to punishment without a formal trial. By this means the acts of strikers were controlled. Much opposition has arisen to this method of dealing with these cases; it is called "government by injunction."

The common law.

The relations between workmen and their employers are determined primarily by the rules of "common law." This is that body of law "which originated in the common wisdom and experience of society, in time became an established custom, and has finally received judicial sanction and affirmance in the decision of the courts of last resort."* It is found in reported decisions of courts and in legal text-books of established authority. But the new conditions of modern industrial life have rendered necessary statute laws which modify and supplement the rules of the common law.

Labor bureaus.

(4) The enforcement of labor laws is a duty of State and local officers; but in nearly every State of the Union there have been created bureaus of labor having more or less complete powers over the administration of labor laws. In some cases the powers are merely those of collecting statistical information and of inspection in the ordinary sense of that term; in these ways much valuable information concerning conditions of labor is made public. But the power of enforcing labor laws is often vested in these bureaus, or in special officers called factory inspectors, who devote their time to this matter.

Industrial education.

(5) Looking toward the prevention of evils and conflicts in the industrial world, we find the establishment, by city and State governments, of industrial and technical schools and the incorporation of manual training courses

* Robinson, Elementary Law, 2; Dole, Talks about Law, 8.

in the common schools. For with the increased intelligence and skill of workmen will come increased respect for their rights, and more reasonable settlement of their relations to capitalists.

Some laws have been passed, and others are under consideration, upon many important subjects relating to labor, besides those mentioned in this chapter. Such subjects are: old age pensions, employers' liabilities, industrial insurance or compensation for loss due to sickness or injuries, State employment bureaus, and the regulation of industries that are injurious to health of employees.

Supplementary Questions and References

1. Find in the statutes of your State provisions regulating the employment of labor. Has your State an efficient system of factory inspection?

2. When were the first factory acts of England passed? Gardiner, History of England, 911, 927.

3. What value have the statistics that are collected by labor bureaus?

4. What has been accomplished in your State toward the peaceful settlement of labor disputes?

5. The use of injunctions in connection with labor troubles. Indept., 65 : 348–351; 460–463.

6. Why are the economic functions of government increasing?

7. Labor legislation. Stimson, Labor in its Relations to Law. By the same author, Handbook to the Labor Laws of the United States.

8. What are *blacklisting, boycotting, picketing, sweat-shops?* See dictionaries and Encyclopedia of Social Reform.

PART II

THE NATIONAL GOVERNMENT

CHAPTER XII

STEPS LEADING TO UNION

Colonial relations.

A NOTABLE fact presents itself as we consider the relations of the colonies prior to the Revolutionary war. There was a general indifference toward union, and it was only by slow and arduous steps that union was finally accomplished. This may be partially accounted for, if it be recalled that the early settlements were usually found scattered along the coast, each with its own harbors and interior waterways. Lack of roads, together with the primitive methods of travel then in use, rendered extended intercommunication wellnigh impossible. Besides, each colony had its own separate government, and different religious beliefs and practices tended to produce distrust and dislike among the colonists. There were, however, some strong bonds of sympathy. Their language and institutions were mainly English, and they were interested in the development of liberal government. Again, a community of interests was created in the necessity for protection against their Indian, French, and Dutch foes. In general, it may be said that confederation was early brought about through the need for defence, but union has been the fruit of long years of transformation and assimilation.

The New England confederation.

In 1643 the four colonies—Massachusetts Bay, New Plymouth, Connecticut, and New Haven—entered into a league ("for mutual help and strength in all our future concernments") known by the name of the United Colonies of New England. This confederation was necessary, because the English government, then in the midst of the Puritan revolution, was unable to furnish the colonists protection against their Dutch, French, and Indian enemies. In the annual meetings of the commissioners, two being sent by each colony, questions pertaining to war, peace, and relations with the Indians were discussed. This central government possessed only advisory power over the colonies, and had no power whatever over the individual citizens. The confederation was finally dissolved in 1684.

Intercolonial conferences between 1690 and 1754.

During the intercolonial wars the colonists were in constant danger from attacks by the French and Indians. The meeting at New York in 1690 of commissioners from Massachusetts, Plymouth, Connecticut, and New York "to fix upon such methods as should be judged most suitable to provide for the general defence and security and for subduing the common enemy," was the first of about a dozen such intercolonial conferences. Through these meetings, and especially by the co-operation of the forces of the various colonies in the army and the navy, social and religious prejudices were weakened and the sentiment for union was stimulated.

Penn's plan of union, 1697.

In 1697 William Penn presented to the Board of Trade a plan for the union of the colonies which, though not adopted, is of interest, for it contained the first use of the word "Congress" in connection with American affairs. The plans presented for the fifty years following were largely fashioned after this model.

The Lords of Trade, knowing that a general colonial war, caused by French aggression, was inevitable, directed

that a Congress, consisting of delegates from all the colonies, should assemble at Albany for the purpose of making a treaty with the Iroquois Indians and considering other means of defence. The suggestion was made in America that the commissioners should also draw up some plan for colonial union. This Congress, consisting of twenty-five of the leading men from seven different colonies, was an important advance toward union. A treaty with the Indians was secured. The Congress then adopted unanimously the resolution that "A union of all the colonies is at present absolutely necessary for security and defence." A plan of union, drawn up by Benjamin Franklin and known as the Albany plan, was also adopted. This plan provided for a Governor-General to be appointed by the Crown and a grand council to be composed of delegates elected by the colonial assemblies. The assemblies rejected the plan, for they objected to the presence of a royal officer. The English government did not approve the plan, for it was thought too democratic.

The Albany Congress, 1754.

Stirred by the various acts of the English government and especially by the passage of the Stamp Act, the Massachusetts House of Representatives issued an invitation, to the other colonial assemblies, to send delegates to a general meeting. Nine colonies responded by sending twenty-eight men to the Congress which assembled in New York, October 7, 1765.* They were in session two weeks and during this time petitions to the English government and a declaration of rights were formulated. This declaration is of importance in that it sets forth for the first time the united views of the colonists relative to questions which were to form the basis for revolution. The Congress declared the rights of the colonists to be the same as those of *natural born* subjects of England. It is

The Stamp Act Congress, 1765.

* Virginia, New Hampshire, Georgia, and North Carolina sympathized with the movement but did not send delegates.

notable that here again representatives had assembled on the motion of the colonists themselves. An advanced position was taken by Christopher Gadsden of South Carolina, who asserted: "There ought to be no New England man, no New Yorker, known on the continent; but all of us Americans." During the following year the Stamp Act was repealed.

The First Continental Congress, 1774

The policy of coercion was still continued by the English government, and finally the repressive acts of 1774 were passed. Again Massachusetts, June 17, 1774, under the leadership of Samuel Adams, called for a congress of all the colonies and hastened the meeting through its committee of correspondence. Delegates from all of the colonies, with the exception of Georgia, assembled at Philadelphia, September 5, 1774. In this Congress, without legal status, its representatives having been chosen ordinarily by irregular congresses and conventions, there were again some of the most influential men in America. Resolutions were passed approving the action of Massachusetts in her resistance to the measures of Parliament, and a Declaration of Rights was prepared. In this Declaration was asserted the right of exclusive legislation in the colonial legislatures, limited only by the negative of "their sovereign in all cases of taxation and internal polity." An "association" was adopted, binding the colonists not to import or consume British goods after December, 1774, and not to export goods to England or her colonies after September, 1775. Congress advised the appointment of committees in every locality who should recommend that the colonists should have no dealings with persons who would not observe this policy. Such committees were quite generally organized.

The Second Continental Congress, 1775.

The resolutions of the First Continental Congress had little influence on the English government, and other measures were quickly passed carrying out the policy of

repression. Before the Second Continental Congress assembled, the battle of Lexington had been fought and the American forces were then holding Boston in a state of blockade. This Congress convened in Philadelphia, May 10, 1775, and continued in session, with adjournments from time to time, until March 1, 1781.

Organization of the Congress.

All of the colonies were represented, and nearly all of the delegates had been members of the First Continental Congress. The members sat behind closed doors and were enjoined to keep all matters of discussion absolutely secret. It was determined that each State should have one vote and that final authority on all questions should rest with a majority of the States assembled in the Congress.

Authority of the Congress.

Like previous Congresses, this one was, at first, merely an advisory body. It was expected that all matters would be reported back to the States for instructions, but the crisis had come and the situation compelled Congress to exercise sovereign powers.

Powers exercised by Congress.

Congress at once took control of military affairs and called Washington to the command of the army which it created. It provided for a national currency; organized a general post-office; and threw open American ports to the ships of all nations. It furthered union and independence by the appointment of a committee to formulate the ideas on independence then prevalent; and of another committee to prepare the form of confederation to be entered into. Between May 10, 1775, and July 4, 1776, the change in sentiment was rapid. King George III. refused to return a formal answer to their last petition and proclaimed the colonists "dangerous and ill-designing men." Heretofore, the colonists had striven for a union of thought and action, which they believed to be the best means to secure those rights which were everywhere the heritage of Englishmen. When the result of

The Declaration of Independence.

the last petition became known, October 31, 1775, there was no longer any hesitancy with regard to the course to be pursued. Henceforth, they were to gather additional inspiration as they strove to secure rights regarded as common to all mankind. These new views were embodied in the Declaration of Independence.

The colonies made States.

Even before the adoption of the Declaration of Independence, Congress recommended, having been appealed to for advice by New Hampshire, South Carolina, and Virginia, that new forms of government should be established. By the year 1777 ten States had framed new constitutions.

The problem of the relations between the general government and the States was second in importance only to the problem of the winning of independence from England. The State legislatures were held in greater respect than was the Continental Congress. It became clear, then, to some of the leaders, that if union were to be preserved, it would be necessary to have a government more effective than a revolutionary assembly. As early as July 21, 1775, Franklin had seen this need and had presented to Congress a plan for "Perpetual Union." Action was postponed by Congress, and Richard Henry Lee, the following year, offered in connection with his resolution for independence another resolution for the drafting of the Articles of Confederation. On June 12, 1776, the day on which the committee was appointed to draw up a Declaration of Independence, Congress also named a committee, consisting of one member from each colony, to prepare a form of confederation to be entered into between the colonies. The report of this committee was submitted one month later by its chairman, John Dickinson. A year and four months, a most momentous period in the history of our country, was to elapse before the Articles, as amended, were adopted by Congress and

The Articles of Confederation.

submitted to the State legislatures for approval.* Three years and a half more elapsed before Maryland, the last State, ratified, March 1, 1781.

Nature of the government established.

The adoption of the Articles of Confederation marks one of the most important events in the history of the United States. While it must always be regarded as a weak instrument of government, we must not forget that the Continental Congress worked along entirely new lines, for never before had a confederation so extended as this been even proposed. That there should be a general desire for union, no matter how weak the tie, was of great significance. The Articles provided for a Congress to be composed of not less than two nor more than seven delegates from each State. Delegates were to be appointed as the State legislatures should direct. To each State was given one vote in Congress.

Defects in the government.

The weaknesses in the government were mainly these: Congress might make the laws but could not enforce them. The general government had no power of taxation, but was obliged to depend upon the State legislatures for necessary revenues. There was no separate executive to enforce and no judiciary to interpret the laws. No important resolution could be passed in Congress without the votes of nine States, and the Articles could not be amended except by the ratification of all the States. Congress acted on the States and not on individuals, but it had no power to coerce the States. "Its function was to advise, not to command."

Practical workings of the government.

The fatal lack of organization in the government early produced momentous results. While the war continued, union for self-preservation was necessary; but when peace ensued, the principle of local self-government in the States became more manifest. Washington saw the trend of

* From July 11, 1776, to November 17, 1777. See American History, pp. 184-186.

affairs, and in a circular letter to the governors of the several States, shortly before his resignation as commander of the army, expressed his views in the following words: "Unless the States will suffer Congress to exercise those prerogatives they are undoubtedly invested with by the Constitution, everything must very rapidly tend to anarchy and confusion. . . ." Had this appeal been appreciated by the States, the condition of anarchy which followed would not have occurred. But the jealousy of the States for the central government continued to increase; the State interests became dominant, and that most dangerous period of our history, extending from 1783 to 1788, well called the "critical period," succeeded. It was apparent that the government under the Articles of Confederation was a failure and that the Nation was drifting rapidly toward anarchy and open rebellion. Fortunately in this darkest hour there came forward Washington, Franklin, Hamilton, Madison, and other leaders who were prepared, if need be, to make compromises, but who were determined to preserve the elements of union already secured.

Supplementary Questions and References

1. For a discussion of the topics in this chapter see American History, chapter 12.

2. Who were the Lords of Trade, and what was their attitude toward the colonies? Why was the spirit manifested by the colonial governors a cause for co-operation between the colonies? Why was Federal union hopeless? Fiske, American Revolution, I, 1–6.

3. Why were not the colonies of Rhode Island and Maine included in the New England Confederacy? Fiske, Beginnings of New England, 155–158.

4. Read the Articles of Confederation of the United Colonies of New England. American History Leaflets, No. 7. 1. Reasons for "consotiation." 2. In what way were the apportion-

ments of men and expenses to be made? 3. The numbers, qualifications, and authority of the commissioners? 4. The significance of the provision relative to fugitives? 5. Reasons for the dissolution of the league? Fiske, Beginnings of New England, 159.

5. For a summary of the intercolonial conferences see Frothingham, Rise of the Republic, 118–120; American History Leaflets, No. 14.

6. After reading the Albany Plan, give reasons for the statements made by Franklin. Old South Leaflets, No. 9. How were the members to be apportioned among the colonies? Give a list of the powers of the central government under this plan. Did it possess full power to make laws?

7. Why were not all of the colonies represented? Fiske, The American Revolution, I, 21.

8. What was the origin of the Committees of Correspondence and how did they aid in unification? Sloane, The French War and the Revolution, 161, 162; Hart, Formation of the Union, 57.

9. How were the delegates to the Second Continental Congress appointed? What was the character of this Congress? Hart, Formation of the Union, 73, 74; Fiske, The Critical Period of American History, 92, 93.

10. Why was the adoption of the Articles of Confederation so long delayed? Hart, American History Told by Contemporaries, II, 539–543; Fiske, The Critical Period of American History, 93, 94; Walker, The Making of the Nation, 6; Hart, Formation of the Union, 93–95.

11. Read the Articles of Confederation, Appendix B. 1. How was the Congress composed? 2. The number necessary for a quorum? 3. The powers of Congress? 4. Powers of the separate States?

12. What was the attitude toward union during the period 1783–1788?

13. Were there notable bonds of union even at this time? What other influences have increased this sentiment? Fiske, The Critical Period of American History, 55–63; Walker, The Making of the Nation, 7, 8.

CHAPTER XIII

THE CONSTITUTIONAL CONVENTION

Events leading to the Constitutional Convention.

AMONG the many difficulties referred to in the previous chapter, there were constant disputes between Virginia and Maryland relative to the navigation of the Potomac River and of Chesapeake Bay. Finally, in March, 1785, three commissioners from these States, on the recommendation of Mr. Madison, met at Alexandria, Va., for the purpose of considering the difficulties. They soon adjourned to Mount Vernon. While there, Washington proposed that they include in their report the recommendation that there should also be a uniform system of duties and a uniform currency. It was seen, however, that if anything permanent in these matters was to be accomplished, all of the States must join in an agreement. In January of the following year, Virginia invited the other States to send delegates to a convention at Annapolis to consider the condition of commerce and duties on imports.

The meeting at Annapolis and its results.

There were present at Annapolis, September 11, 1786, commissioners from Virginia, Delaware, Pennsylvania, New Jersey, and New York. Commissioners from some of the other States were on their way, but Maryland, Georgia, South Carolina, and Connecticut had appointed none. Nothing permanent could be accomplished with so few States represented; but before adjourning they agreed to a resolution framed by Alexander Hamilton which proposed a convention to be composed of commissioners from all the States to meet at Philadelphia on the second Monday in May, 1787, for the purpose of amending the Articles of Confederation. Copies of this resolution

were sent to all of the States and also to Congress. Not until delegates had been appointed by six States did Congress practically approve of the plan by recommending to the States a convention identical with the one already provided for by the Annapolis resolution. The remaining States, Rhode Island excepted, soon appointed delegates.

The Federal Convention, 1787.

The day fixed for the Convention was May 14, 1787, but not until May 25 was there a quorum of delegates from seven States present at Philadelphia. The number of delegates to be sent by each State had not been specified; and in order that the States should have equal powers, one of the first standing rules adopted provided that the voting should be by States. Seventy-three delegates were appointed as members in this, one of the most memorable assemblies the world has ever known, but only fifty-five attended. Twenty-nine of the number were university men. With but few exceptions, the men who had been particularly prominent in the days of the Revolution were present. Among them were Washington, who was unanimously chosen President of the Convention, and Franklin, whose fame as diplomat and legislator was world-wide. Neither of these men took an active part in the debates, but their presence gave inspiration to the others and they had untold influence at critical times.

Delegates in attendance.

On May 22, while some of the delegates, in their fears of displeasing the people, were recommending half-way measures, Washington gave expression to that sentiment which was to dominate in the future debates of the Convention. He said: "It is too probable no plan we propose will be adopted. Perhaps another dreadful conflict is to be sustained. If to please the people, we offer what we ourselves disapprove, how can we afterwards defend our work? Let us raise a standard to which the wise and the honest can repair; the event is in the hand of God."

Other signers of the Declaration of Independence present besides Franklin were Roger Sherman, of Connecticut; George Read, of Delaware; Elbridge Gerry, of Massachusetts; Robert Morris, of Pennsylvania; and Chancellor Wythe, of Virginia. Virginia also sent George Mason, Edmund Randolph, and James Madison; Massachusetts, Caleb Strong, Nathaniel Gorham, and Rufus King. Delaware sent John Dickinson. Pennsylvania was represented by James Wilson, the great jurist, and Gouverneur Morris, "whose correctness of language" led him to be selected to prepare the final draft of the constitution; and Connecticut by Oliver Ellsworth, one of the greatest lawyers of the day, who afterward became Chief-Justice, and William S. Johnson, who became President of Columbia College. Among the other more notable members were Alexander Hamilton, of New York; Governor William Paterson, of New Jersey; Luther Martin, of Maryland; and the two Pinckneys and John Rutledge, from South Carolina.

Notable men not present.

John Adams and Thomas Jefferson were then in Europe, and Samuel Adams, Patrick Henry, and Richard Henry Lee disapproved of the Convention.

Our knowledge of the Convention.

The Convention lasted from May 25 to September 17, 1787. The members sat behind closed doors, and the charge of secrecy with regard to the proceedings was placed on them. The official journal was entrusted to Washington, who deposited it in the public archives in 1796. It was published in 1819 as a part of volume one of Elliot's Debates. We can gather little from the journal with regard to what was actually said by the members, but fortunately Mr. Madison, with an appreciation of the consequences of the Convention, decided to give as nearly as possible an exact report of the proceedings. He wrote: "Nor was I unaware of the value of such a contribution to the fund of materials for the history of a Constitution on which would be staked the happiness of a people great even in its infancy, and possibly the cause of liberty throughout the world." These notes were purchased by the government from Mrs. Madison in 1837 for $30,000, and published for the first time in 1839.

Madison's "Journal," 50.

Plans and compromises.

The magnitude of the labor of the Constitutional Convention can be understood only as we read in Madison's notes the report of the discussions. The actual work of the Convention was begun on May 30, when it went into committee of the whole for the purpose of considering a series of fifteen resolutions which had been presented the day before by Governor Edmund Randolph, of Virginia. The plan of government set forth in them, known as the Virginia Plan, was largely the work of Mr. Madison. It was considered until June 13, and after certain amendments had been adopted was reported back favorably to the Convention. Among the most important provisions finally submitted were the following: (1) That a National government should be formed possessing supreme legislative, executive, and judicial powers; (2) that the legislative power should be vested in a Congress of two separate houses—a House of Delegates to be chosen by the people of the States, and a Senate to be elected by the House of Delegates; that the representation in both houses should be based on population or on contributions to the support of the government; and that the executive should be chosen by both houses of Congress, and the judiciary by the Senate. This scheme had been fiercely attacked in the committee by the delegates from the smaller States, who desired to maintain equality of State representation. It was clear that if the plan proposed were adopted the government would pass into the hands of the large States.

The Virginia Plan.

The New Jersey Plan.

Frustrated in their desires, the small States agreed upon a series of eleven resolutions, known as the New Jersey Plan, which were presented by Mr. Paterson of that State on June 15. They provided for a continuance of the government under the Articles of Confederation, which were to be revised in such a manner as to give to Congress the power to regulate commerce, to raise revenue,

and to coerce the States. This plan had been agreed upon among the members from Connecticut, New York, New Jersey, Delaware, and Luther Martin, of Maryland. The New Hampshire delegates had not yet arrived. Connecticut and New York were against a departure from the principle of confederation, wishing rather to add a few new powers to Congress than to substitute a National government.

The Pinckney resolutions.

On the same day that Governor Randolph presented the Virginia Plan, Charles Pinckney, of South Carolina, presented a series of resolutions founded on similar principles. It never received a separate consideration but had considerable influence on parts of the Constitution.

Hamilton's views

On June 18, in the midst of the crisis as to whether a national or a federal government should be established, Hamilton made his celebrated speech in opposition to both plans. He wanted a highly centralized government. "Governors," "senators," and "judges" were, according to his view, to hold office during good behavior.

The Virginia *vs.* the New Jersey Plan

For three days the contest waxed hot over the merits and defects of these plans. It was asserted by those who opposed the Virginia Plan that it would destroy the sovereignty of the States. They believed also that they did not possess the power to create such a government. Said Paterson: "I came here not to speak my own sentiments but the sentiments of those who sent me. Our object is not such a government as may be best in itself, but such a one as our constituents have authorized us to prepare and as they will approve." To this sentiment Randolph replied: "When the salvation of the Republic is at stake, it would be treason not to propose what we find necessary." Finally the arguments of Madison, Wilson, and King triumphed and the Virginia Plan was again presented to the Convention. The debates became even more heated than before, as resolution after resolu-

tion was taken up. The critical time came when the clause which provided for proportional representation was reached. Luther Martin contended with great vehemence, "That the States, being equal, cannot treat or confederate so as to give up an equality of votes without giving up their liberty; that the propositions on the table are a system of slavery for ten States; that as Virginia, Massachusetts, and Pennsylvania have forty-two ninetieths of the votes, they can do as they please, without a miraculous union of the other ten." Others claimed they would rather submit to a foreign power than be deprived of equality of suffrage in both branches of the legislature. The Convention was on the verge of dissolution when Johnson, of Connecticut, brought forward a compromise based on the different methods by which members of the two houses were chosen in that State. This provided that the House of Representatives should be composed of members elected on the basis of population, while, in the Senate, large and small States were to be equally represented. Finally, after eleven more days of discussion, this, the first great compromise, was adopted.

The Connecticut compromise.

The adoption of the compromise was virtually a victory for the Virginia Plan. When the smaller States were given an equal vote in the Senate, they no longer feared that they would be absorbed, so they united with the larger States in giving yet greater powers to the general government.

How was the number of Representatives to be determined was another serious problem. It was agreed that all free persons should be counted. There was little objection offered to counting those persons bound to service for a term of years and to the excluding of Indians not taxed. The chief debate arose over the question whether the slaves should be included in the enumeration. The South Carolina delegates maintained that

The second or three-fifths compromise.

slaves were a part of the population, and as such should be counted. Objections were made that slaves were not represented in the legislatures of that and other States, and, in consequence, ought not to be represented in the National legislature; also, that they were regarded in those States merely as property, and as such should not be represented. There was grave danger that the work of the Convention would fail at this point. Finally, a proposition was introduced to the effect that slaves were to be represented as "other persons," three-fifths of whom were to be counted. Another clause was inserted for the purpose of reconciling the non-slaveholding States to this provision: that "direct taxes should be apportioned in the same manner as Representatives."

The third compromise.

The third great compromise grew out of the question of the foreign slave trade. South Carolina and Georgia were anxious that this should be continued. This was opposed by the Northern States and by some of the Southern. On the other hand, New England members, especially, because of their interest in commerce, feared the results which would ensue if each State was allowed to be independent in commercial matters. They wanted the general government to have complete control of commerce. But this was resisted by some of the Southern delegates, who thought that, by some act of legislation, the trade in slaves might be prohibited. Finally a compromise was agreed upon which gave Congress power over commerce but forbade any act which might prohibit the importation of slaves prior to 1808. It was also agreed that a tax of ten dollars each might be laid on all slaves imported.

Influence of the compromises.

While the Constitution may be said to be made up of a series of compromises, these three settled, for the time, the questions which were most vital, and rendered the further work of the Convention possible. It has been sometimes asserted that there should have been no half-way meas-

ures on slavery; that had the question of slavery been settled at that time there need not have been a Civil War. But, as already noted, without compromises the work of the Convention must have failed, and political anarchy would have been inevitable, the results of which would have been even more disastrous than the effects of that terrible period of warfare between 1861 and 1865.

Some of the leading features of the new government.

The Constitution divided power among three practically independent departments of government, *viz.*, the Legislative, the Executive, and the Judicial. In place of the single house of the confederation there was to be formed a legislative body consisting of two houses. Experience had proved that a strong executive power was necessary to enforce the laws. It was finally agreed to entrust this power to a single person, the President.

Authority of the government established.

Hamilton characterized the lack of a judiciary, under the confederation, as the crowning defect of that government. The conviction that the Federal judiciary should constitute one of the three parts of the government was general in the Convention, and after a brief discussion provision was made for it. The Federal government, according to the Constitution, was no longer, as under the Articles of Confederation, to be the agent of or to be dependent upon the States. Its laws were to be *imperative*, not *advisory* merely, and were to operate upon *persons* and not *States*. Certain significant powers were bestowed upon the National government, such as the right to tax; to regulate commerce; to make war and peace; to support an army and navy; and to coin money. The peculiarity of the new government lies in the division of powers between State and National authorities. The National government was to exercise certain powers enumerated in the Constitution. All other powers not prohibited by the Constitution to the States were to be reserved to the States or to the people.

Signers of the Constitution.

The final draft of the Constitution, prepared by Gouverneur Morris, was then submitted to the delegates for their signatures. Thirty-nine members, representing twelve States, affixed their names to the document, and on September 17 the Convention adjourned.* While the last signatures were being written, Franklin said to those standing near him as he called attention to a sun blazoned on the back of the President's chair: "I have, often and often, in the course of the session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the President, without being able to tell whether it was rising or setting; but now, at length, I have the happiness to know that it is a rising and not a setting sun."

Madison's "Journal," 763.

Ratification of the Constitution.

The Constitution was first submitted to Congress September 20, and the following day it became known to the people through the New York daily papers. For eight days the document was attacked by its opponents in Congress, but finally it was transmitted to the State legislatures to be sent by them to State conventions chosen by the people. This process of ratification was provided for by Article VII of the Constitution, as follows:

Article VII.

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

The period included between September 28, 1787, when Congress unanimously resolved to transmit the Constitution to the State legislatures, and June 21, 1788, the date when it had been ratified by the necessary nine States,† was one of the most critical in our history. Everywhere the Constitution was violently attacked. Political parties in a truly national sense were formed for the

* See Appendix A.

† The State legislatures submitted the Constitution to State Conventions.

first time. Those who supported the Constitution called themselves Federalists, and those opposed Anti-Federalists.

Arguments for and against the Constitution.

In general, the opponents of the Constitution desired more extensive powers for the States, and were to be found largely among the rural population and debtor classes. Its advocates, the Federalists, were the men of wealth and the inhabitants of the manufacturing and commercial centres. Among the leaders who ably defended the views of the opposition, the Anti-Federalists, were Richard Henry Lee, Elbridge Gerry, George Clinton, and Patrick Henry. It was urged that the President would become a despot, the House of Representatives a corporate tyrant, and the Senate an oligarchy; that equality of representation in the Senate was an injustice to the large States; and that there was no Bill of Rights. The views of the Federalists are well presented in a letter written by Washington, on his return from the Convention, to Patrick Henry, in which he says: "I wish the Constitution which is offered had been more perfect; but it is the best that could be obtained at this time, and a door is open for amendments hereafter. The political concerns of this country are suspended by a thread. The Convention has been looked up to by the reflecting part of the community with a solicitude which is hardly to be conceived, and if nothing had been agreed on by that body, anarchy would soon have ensued, the seeds being deeply sown in every soil."

The Federalist.

Political letters, tracts, and pamphlets flooded the country. The most noted articles in opposition were the "Letters from the Federal Farmer," prepared for the press of the country by Richard Henry Lee. No influence was more noteworthy in bringing about ratification than the series of political essays afterward collected under the title of "The Federalist." They present the cause with such logic that to-day they are considered the best com-

mentary on the Constitution ever written. Alexander Hamilton inaugurated the plan and wrote 51 of the 85 numbers. James Madison wrote 29 and John Jay 5.

The Constitution in the State conventions.

December 6, 1787, the ratification of the Constitution was secured in Delaware, the first State, without a dissenting vote, and Pennsylvania, New Jersey, Georgia, and Connecticut quickly followed. Much depended on the action of the Massachusetts convention. After prolonged debate the delegates were induced to accept the proposition that amendments might be made which would take the place of a Bill of Rights, and adopted the Constitution by a vote of 187 to 168. The ratification of Maryland and South Carolina soon followed, and the ninth State was secured by the ratification of New Hampshire, June 21, 1788. Virginia ratified, June 25, with a vote of 89 in favor and 79 opposed, and New York, July 26, with 30 affirmative votes and 27 negative. It was not until November 21, 1789, that North Carolina voted to accept the Constitution, while Rhode Island held out until May 29, 1790.

The new government put into operation.

When the ratification of the ninth State had been secured, Congress appointed a special committee to frame an act for putting the Constitution into operation. It was enacted that the first Wednesday in January should be the day for appointing electors; that the electors should cast their votes for President on the first Wednesday in February, and that on the first Wednesday of March the new government should go into operation. It was not until April 1 that a quorum was secured in the House of Representatives, and in the Senate not until April 6. The electoral votes * were counted in the presence of the two houses on April 6. The inauguration of President Washington did not take place, however, until April 30.

* New York did not choose electors, and North Carolina and Rhode Island had not ratified the Constitution.

Origin of the Constitution.

Having considered some of the problems of the Convention and those connected with the adoption of the Constitution, we next inquire as to the origin of this epoch-making document. The often-quoted words of Mr. Gladstone, which have no doubt been misinterpreted, have been used to strengthen the view that the Constitution was the creation of the Convention. He said: "As the British Constitution is the most subtle organism which has proceeded from progressive history, so the American Constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man." An analysis of the Constitution shows that there are some provisions which are new and that English precedent has had an influence, but that the main features were derived from the constitutions of the States. Many of the delegates of the Constitutional Convention had helped to frame these State constitutions, and all were familiar with their practical workings. Thus, the Convention was "led astray by no theories of what might be good, but clave closely to what experience had demonstrated to be good." * The following familiar statement is an excellent summary: "Nearly every provision of the Federal Constitution that has worked well is one borrowed from or suggested by some State constitution; nearly every provision that has worked badly is one which the Convention, for want of a precedent, was obliged to devise for itself."

Influence of the State constitutions. New Princeton Review, IV, 175.

With the exceptions of the constitutions of Pennsylvania and of Georgia, all of the State constitutions, in 1787, provided for legislatures of two houses. The term "Senate" was used to designate the upper house in Maryland, Massachusetts, New York, North Carolina, New Hampshire, South Carolina, and Virginia; and "House of Representatives" was commonly used for the lower house. The constitution of Delaware provided for the election of one-third of the senators every two years, and the New York constitution made provision for taking a census

* James Russell Lowell, address of April 13, 1888.

once in seven years for the purpose of apportioning the Representatives. As already noted, Connecticut furnished the example for equal representation of the States in the Senate and for proportional representation in the House of Representatives. In nearly all of the State constitutions, each House was given the power to decide the election of its members, make rules, publish a journal, and adjourn from day to day. "All bills for raising revenue must originate in the House" is found almost word for word in the Massachusetts and New Hampshire constitutions. The powers of President and Vice-President resemble closely those granted the governor and lieutenant-governor. Other important provisions were, no doubt, derived from the State constitutions, such as the process of impeachment, the veto power, the first ten amendments, and the President's message.

New features of the Constitution.

Professor Alexander Johnston, in the article the substance of which has just been given, states that while a judicial system existed as a part of the State governments, the "great achievement of the Convention was the erection of the judiciary into a position as a co-ordinate branch of the government." He says also that "the process of electing the President is almost the only feature not a natural growth."

Authority and purposes of the Constitution.

It was evidently the intention of the framers of the Constitution to found a government deriving its authority from the people rather than from the States. The purposes for which this was done are set forth in the following enacting clause, commonly called the preamble:

The preamble.

"*We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.*"

This clause was attacked vigorously by the opponents of the Constitution, and especially in the Virginia and the North Carolina conventions. Said Patrick Henry: "And here I would make this inquiry of those worthy characters who composed a part of the late Federal

Convention. . . . I have the highest veneration for those gentlemen; but sir, give me leave to demand, what right had they to say We the people? . . . Who authorized them to speak the language of, We the people, instead of, We the States? If the States be not the agents of this compact, it must be one great, consolidated, National government, of the people of all the States." It was argued, on the other hand, by Randolph, Madison, and others, that the government under the Articles of Confederation was a failure and that the only safe course to pursue was to have a government emanating from the people instead of from the States, if the union of the States and the preservation of the liberties of the people were to be preserved.

Supplementary Questions and References

1. Consult American History, chapter 13, for additional material on the topics in this chapter.

2. Why was Annapolis selected as the place of meeting? Madison, Journal of the Constitutional Convention, 37.

3. For an account of Hamilton's resolution and its origin, see Madison's Journal, 37–41.

4. Was the calling of a convention to remodel the articles a new idea? Madison's Journal, 43–45.

5. Why did Congress, at first, object to the Hamilton resolution? Fiske, Critical Period of American History, 217.

6. State the problems connected with the appointment of delegates in some of the States. McMaster, History of the People of the United States, I, 390–399.

7. For an account of the members of the Convention, see Hart, American History told by Contemporaries, III, 205–211.

8. For the contributions of the individuals and the classes of delegates, see Walker, The Making of the Nation, 23–27; Fiske, Critical Period, 224–229; McMaster, I, 418–423.

9. Why did not Hamilton take a prominent part in the debate

before June 18? Give the chief points in his address of that date. Madison's Journal, 175–187.

10. What were the significant points made by Madison in his speech of June 19? Madison's Journal, 187–196.

11. Why did the New York delegates leave the Convention? Bancroft, VI, 259–260; Fiske, Critical Period, 254.

12. What was the attitude of the various members of the Convention toward the Constitution? Who refused to sign? Their reasons? Bancroft, VI, 364–367.

13. Discuss the peculiar conditions in Massachusetts. Give the arguments presented. Schouler, I, old ed., 59, 60; new ed., 66–68; Walker, 56–57; Fiske, Critical Period, 316–331.

14. How was the Constitution regarded in Virginia? Bancroft, VI, 426–436; Walker, 58, 60; Schouler, I, 70–75; Fiske, Critical Period, 334–338.

15. In what way did Virginia influence New York? What was the attitude of the New York Convention toward the Constitution? Bancroft, VI, 455–460; Walker, 60, 61; Schouler, I, old ed., 66, 67; new ed., 77–78; Fiske, Critical Period, 340–345.

16. *a.* What objections were offered against the Constitution in North Carolina? Hart, American History told by Contemporaries, III, 251–254.

b. What would have been the status of North Carolina and of Rhode Island if they had not ratified? Walker, 73, 74; Hart, Formation of the Union, 132, 133.

17. For a good account of the first Presidential election and the inauguration of the new government, see Fiske, Critical Period, 346–350; Schouler, I, old ed., 74–86; new ed., 79–92.

CHAPTER XIV

ORGANIZATION OF THE LEGISLATIVE DEPARTMENT

Article I, section 1.

All legislative powers herein granted shall be vested in a Congress of the United States which shall consist of a Senate and House of Representatives.

A Congress of two houses.

In the Constitutional Convention, Pennsylvania was the only State which objected to the resolution that a legislative body consisting of two houses should be formed. The single house of the Confederation was regarded as a failure. It was believed that one house would form a check upon the other, and that there would thus be less danger of hasty and oppressive legislation. As already noted, the bi-cameral system existed in all of the States, Pennsylvania and Georgia excepted, and the names Senate and House of Representatives were also in common usage.

Section 2, clause 1. Term of members and qualifications of electors.

The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

Responsibility of members of Congress.

It is somewhat difficult for Americans to remember that members of Congress, although elected by the people or by the State legislatures, are not, in consequence, compelled to receive instructions from their constituents. Each member is supposed to use his own best judgment on any question, and, like a member of the English House of Commons, ask: "What is for the good of the Nation?" Personal views are frequently sacrificed, however, for party interests.

Judge Cooley says on this question:

"Their own immediate constituents have no more right than the rest of the Nation to address them through the press, to

appeal to them by petition, or to have their local interests considered by them in legislation. They bring with them their knowledge of local wants, sentiments, and opinions, and may enlighten Congress respecting these and thereby aid all members to act wisely in matters which affect the whole country; but the moral obligation to consider the interest of one part of the country as much as that of another, and to legislate with a view to the best interests of all, is obligatory upon every member, and no one can be relieved from this obligation by instructions from any source." *

Representatives elected by the people.

When the Constitution was framed, some of the State constitutions required a higher qualification in voters for the upper house of their legislatures than in voters for the lower house. With the object of making the House of Representatives the more popular branch, it was decided to grant the right of voting for a Representative to any person who might be privileged to vote for a member of the lower house of the legislature of his State. The one limitation upon the freedom of a State to determine what these qualifications are, is given in Amendment XV:

Amendment XV.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

This amendment was proposed by Congress in February, 1869, and was declared in force March 30, 1870. It was intended to grant more complete political rights to the negroes recently declared, by Amendment XIV, to be citizens.

Section 4, clause 2.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

A Congress.

Members of the House of Representatives are chosen for a term of two years, which period also determines

* Cooley, Principles of Constitutional Law. 41, 42.

the length of a Congress. This election is held, in all but three of the States,* on the Tuesday after the first Monday in November, of even-numbered years, and the term begins legally on March 4 succeeding the time of the election.† Except in the case of a special session, the members do not enter upon their duties until the first Monday of the following December, thirteen months after the election.

Sessions of Congress.

Each Congress has two regular sessions. The first, beginning in December of an odd-numbered year, is called the "long session," for its length is not determined by a definite date of adjournment. It usually lasts until the following midsummer and may not extend beyond the first Monday in December, the time fixed for the beginning of the next session. The second, or "short session," cannot extend beyond 12 M., March 4, the time set for a new Congress to begin. The President may convene Congress in special session.

The meeting and organization of Congress.

The first Monday in December of each second year is a notable day in Washington, for the formal opening of a new Congress brings thousands of visitors to the city. In the House of Representatives the organization must proceed as if the body had not met before. To the Clerk of the preceding House are intrusted the credentials of the members, and from these he makes out a list of the members who are shown to be regularly elected. At the hour of assembly he calls the roll from this list, announces whether or not a quorum is present, and states that the first business is to elect a Speaker. After his election the Speaker takes the oath of office.

* Oregon holds its election on the first Monday in June; Vermont on the first Tuesday in September; and Maine on the second Monday in September.

† The first Congress extended legally from March 4, 1789, to March 4, 1791.

The Senate is a "continuing body" and no formal organization is necessary. At the opening of a new Congress the Vice-President calls the body to order and the other officers resume their duties. After the President *pro tempore* has been chosen, the newly elected members are escorted to the desk in groups of four and the oath is administered by the President of the Senate. Each house, when organized, notifies the other of the fact and a joint committee of the houses is appointed to wait upon the President and inform him that quorums are present and are ready to receive any communication he may desire to send.

Section 2, clause 2. Qualifications of Representatives.

No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not when elected be an inhabitant of that State in which he shall be chosen.

A great diversity of qualifications for members of the State legislatures existed in the various State constitutions. With such differences of opinion, it was agreed to make the positive qualifications for members of the National legislature few and simple. They pertain to age, citizenship, and inhabitancy, and the opinion prevails that the States may not add others. It has been the belief in the United States that an inhabitant of a State has a deeper concern for the interests and represents the people of his State more completely than a stranger. Hence, a Representative is not only required to be an inhabitant of the State, but custom has decreed that he must also be an actual resident of the district which he represents. It sometimes happens in New York City, however, that an "up-town" resident is elected to represent a "down-town" constituency.

May the House refuse to admit a person duly elected and possessing the constitutional qualifications? This question arose

in the 56th Congress in the case of Brigham Roberts, of Utah, and he was excluded on the ground that he was a polygamist.

Section 2, Amendment XIV, which became a part of the Constitution July 28, 1868, contains the rule of apportionment which is now in operation.

It declares that:

Apportionment of Representatives.

Amendment XIV, section 2.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

When the amendment was proposed, negroes had been granted the right of suffrage in only a few States, and Congress believed that rather than have the number of their Representatives reduced the other States would also be willing to grant them complete political rights. Tennessee was the only Southern State which ratified the amendment, but since Amendment XV became a part of the Constitution before the next apportionment of Representatives was made, this section was not put into practical operation. Each State may still determine for itself who has the right to vote within its limits. (See page 43.)

A few of the States, as Pennsylvania, require a property qualification, and about one-third require an educational qualification for voters. In Massachusetts he must be able to read

the State constitution in the English language, and write his own name unless prevented by physical disability or was sixty years of age when the amendement went into effect. In Louisiana and South Carolina the voter must either be able to read and write or possess property valued at three hundred dollars. It has been claimed that the object of some of these amendments was not alone to exclude illiterate voters. In proof, it is shown that what has been called the "grandfather clause" in some cases dispenses with the educational qualification. This provides, as stated in the constitution of North Carolina, that "no male person who was on January 1, 1867, or at any time prior thereto, entitled to vote under the laws of any State in the United States wherein he then resided, and no lineal descendant of any such person, shall be denied the right to register and vote at any election in this State by reason of his failure to possess the educational qualifications prescribed." The question has arisen, Should not section 2 of Amendment XIV be enforced? for the various restrictions exclude thousands of adult male citizens from voting. Thus far no action has been taken, although the Republican party in the National platforms of 1904 and 1908 pledged itself to enforce this provision.

Article I, section 2, clause 3. Original method of apportionment.

The original method of apportionment was as follows: *Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsyl-*

vania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

The three-fifths rule was rendered void by the adoption of Amendment XIII, which abolished slavery. There were then no longer the "other persons." That part of the clause providing for the laying of direct taxes is still in force. Really the Southern States were favored. In practical operation, while their direct taxes were increased, these were imposed only on five occasions, and the States of the South secured a large increase of Representatives. The Indians "not taxed" doubtless refers to those Indians who still maintain their tribal relations or live on the reservations. Their number, according to the census of 1910, was 129,518.

The Census.

A careful enumeration of the population of the United States had not been made in 1787. In order to carry out this provision of the Constitution, the first census was taken in 1790 and there has been one every ten years since that time. The taking of the census and the compilation and publication of the statistics connected with it are under the supervision of the Director of the Census. The principal reports in the census are those on population, manufactures, and agriculture. On account of the establishment of a permanent census bureau, in 1902, the work of taking the census is now conducted with much greater economy and efficiency.

The ratio of representation.

According to the original method of apportionment, the number of Representatives was not to exceed one for every 30,000 people, and the House contained 65 members. Various methods were used in ascertaining the ratio of representation after each census until 1870, when the present sytem was employed for the first time.

Apportionment of 1901.

The House of Representatives, after March 4, 1903, according to the reapportionment act of January 12, 1901, had 386 members as a minimum, the ratio being one Representative to

194,182 of the population. An effort was made to keep the number at 357 as established by the reapportionment act of 1891, but no ratio could be found which would enable this to be done without taking from some of the States one or more of their present Representatives.

Members from new States.

The Representatives of States coming into the Union after the apportionment is made are always additional to the number provided for by law. Thus when Oklahoma was admitted five Representatives were added, making 391 members in all.

Apportionment of 1911.

According to the census of 1910, several States were entitled to additional members, but in order that no State should be reduced, the House of Representatives passed a bill providing for an increase of 42 members. The new ratio would then be one Representative to 211,877 people. Effort was made to prevent this increase, for it was argued that the House had already become unwieldy, requiring great effort on the part of members to make themselves heard. The bill failed to pass the Senate at the regular session but subsequently, at the special session, it was passed and became a law.

The number of members in the House of Commons is 670; in the French Chamber of Deputies, 584; and in the German Reichstag, 396.

Territorial delegates.

Arizona, Alaska, Hawaii, and Porto Rico are each entitled to send one delegate and the Philippine Islands two delegates to the House of Representatives. These delegates have the privilege of speaking in the House but may not vote.

Section 2, clause 4.

When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

Vacancies.

When a vacancy occurs in the representation from any State on account of death, expulsion, or for other cause, it is made the duty of the Governor of the State in which the vacancy exists to call a special election in that district to choose a Representative for the remainder of the term.

Section 2, clause 5.

The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

The Speaker is always a member of the House.* The other officers are the Clerk, Sergeant-at-arms, Doorkeeper, Postmaster, and Chaplain, none of whom is a member of the House. The Clerk calls the House to order at the first meeting of each Congress, and acts as the presiding officer until a Speaker is elected. He keeps the record of all questions of order that arise, certifies to the passage of bills, and has charge of the printing of the House Journal. The Sergeant-at-arms sees that good order is preserved.

Officers of the House.

The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof for six years; and each Senator shall have one vote.

Section 3, clause 1.

This clause constitutes a part of the celebrated compromise between the large and the small States. There was also great diversity of opinion with regard to the number of members in the Senate and their apportionment among the several States. After equality of representation in this body was decided upon, there still remained the question as to the number from each State. Were there to be three or two? Finally two, the smallest number of Representatives to which a State was entitled under the Confederation, was adopted.† Unlike the delegates in the Continental Congress, the Senators do not vote by States. The two Senators from a State may and often do vote on opposite sides of a question. Other questions arose such as: Were the Senators to be chosen by the legislature of each State; by the people of the States; or by the House of Representatives either directly or from candidates nominated by the State legislatures? The reasons for the unanimous adoption of the first plan

Number, election, and term of office of Senators.

* For an account of the Speaker and his power in legislation, see pp. 175–177.

† The Senate, 1912, contains ninety-four members; the English House of Lords 560, and the French Senate 300.

seems to have been that it would connect the State governments more closely with the National government, and that the powers of the States would not be unduly encroached upon by the general government. Alexander Hamilton was in favor of choosing Senators for life or during good behavior. Terms of nine years, of seven years, of six years, of five years, of four years, and of three years were also proposed. Six years was thought to be most satisfactory, for it would secure permanence of governmental policy and responsibility in the Senators, and at the same time guard against the dangers of a life tenure in which desirable changes would be too much resisted.

The modifications introduced by the next clause seem to have been intended to provide against any permanent combination among the members.

Section 3, clause 2. Classes of Senators.

Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; and of the third class, at the expiration of the sixth year; so that one-third may be chosen every second year, and if vacancies happen by resignation or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

According to this provision, at the first session of the first Congress, the Senators were divided into three classes. Senators from the same State are always placed in separate classes, and the Senators from a new State are assigned in such a manner as to preserve the classification. The classes they are to enter is determined between them by lot drawn in the presence of the Senate. Thus, the Senators from Utah were assigned to the two- and the four-year

classes, and neither of them served the full term of six years.

A Senator appointed by the Governor of a State during the recess of the State legislature holds the office until the next meeting of the legislature, or, in case that body fails to elect his successor, until the end of the session of the legislature.

If the legislature does not elect a Senator.

If, after a Senator's term expires, the legislature fails to elect his successor, the question arises, may the Governor fill the vacancy by appointment? In several instances the Senate has decided against this procedure, and the decision in another case in April, 1900, would seem to indicate that it proposes to carry out the precedent.

Section 3, clause 3. Qualifications of Senators.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State from which he shall be chosen.

Members of the Senate are ordinarily older than members of the House. They are men also who, as a rule, have been prominent in public affairs, National or State. Because of their training and the control by the Senate over treaties and certain of the appointments, Senators have been conceded greater political power than Representatives.

Section 3, clause 4. President of the Senate.

The Vice-President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided.

Section 3, clause 5.

The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

Other officers of the Senate.

The officers of the Senate are President, Secretary, Chief Clerk, Sergeant-at-arms, Chaplain, Postmaster, Librarian, and Door-keeper, none of whom is a member of the Senate. The Vice-President of the United States is

President of the Senate, but has no vote "unless they are equally divided." He cannot take part in the debates nor appoint the Senate committees. These committees, as well as the other officers, are chosen by the Senate. Their duties are similar to those of the corresponding positions in the House.

The President *pro tempore.*

It is desirable, in the absence of the Vice-President, that the Senate shall have a presiding officer, and so at the opening of the session that body chooses from its own members a President *pro tempore.* He may vote on any question, but cannot cast the deciding vote in case of a tie.

Oath of office.

The Vice-President takes the oath of office when he is inaugurated. On the first day of the session he administers the oath of office to the new Senators, who swear to support the Constitution and the laws of the United States.

Section 4, clause 1. Power of Congress over the elections of Senators and Representatives.

The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the place of choosing Senators.

Method prescribed for the election of Senators.

Congress did not exercise its authority in the election of Senators prior to 1866. Many disturbances had arisen between the houses of the legislatures over the mode of election, and an act of that year provided for the present uniform system as follows: The legislature chosen next before the expiration of the term of a Senator shall proceed to elect his successor on the second Tuesday after its organization. On that day each house must vote separately by a *viva voce* vote and enter the result on its journal. The two houses are required to meet in joint assembly at 12 M. the following day, when the results are read. If the same person has received a majority of the votes in both houses, he is elected. If no person have

such majority, the joint assembly must take a *viva voce* vote and the person receiving a majority of such votes is elected, providing a majority of all the members elected to both houses are present and voting. Should there still be no election, the joint assembly must meet at noon on each succeeding day and take at least one vote until a Senator shall have been chosen. The procedure is the same in the case of a vacancy which has occurred before the legislature has assembled. When the vacancy happens during the session of the legislature, it must proceed in the same way the second Tuesday after receiving notice of the vacancy. The usual practice, however, in the States where direct nomination has not been adopted, is for the members of the different parties in the legislature to meet in separate caucuses and agree upon the candidates which they will present to the legislature.

Popular election of Senators

"Deadlocks" in the election of Senators have frequently occurred. In 1899, the legislature of Pennsylvania cast seventy-nine ballots and finally adjourned without electing a Senator. The legislature of Nebraska, in 1901, voted for three months before a Senator was elected. It is stated that at least half the States have, during the past fifteen years, suffered from deadlocks. At times also the votes of individual members in some of the legislatures have been secured by bribery. Because of these and other abuses the agitation in recent years for the election of Senators by popular vote has been more pronounced. The House of Representatives has passed the resolution a number of times providing for an amendment to the Constitution which would secure the election of Senators by popular vote. More than two-thirds of the State legislatures have gone on record in favor of such a reform. But not until 1911 was this proposal to amend the Constitution reported to the Senate for favorable action. The vote on the resolution stood 54 in favor and 33 against. Thus the necessary two-thirds lacked four votes.

The Oregon plan.

Meantime, in a number of the States there has been the attempt to get around the constitutional difficulty. The so-called Oregon plan really provides for the direct election of Senators.

According to this plan each party nominates its candidate in a primary election. The names of these candidates are then placed on the State ticket and are voted for at the general election. The person receiving the highest number of votes is declared to be the choice of the people. To make these steps effective, candidates for the legislature may be pledged, in their petition for the primary, to vote for that candidate for United States Senator who has received the highest number of votes at the general election, without regard to their own personal preference. By such a process, it has happened that a Senator has been chosen of a different political party from that having the majority in the State legislature.

Time and method of choosing Representatives.

The time for the election of Representatives has been prescribed by Congress to be the Tuesday next after the first Monday in November of the even-numbered years. The Constitution provides that they shall be elected by the people. For many years there was variation in the practice of the States, some electing their Representatives by districts, others at large. Since 1842 Congress has required the district plan. But a State receiving an additional Representative, by a new apportionment, may elect him at large until the State is redistricted.

Redistricting the States.

The process of districting the States is under the control of the State legislatures, and is usually performed during the first session after a new apportionment has been made, although some States are redistricted more frequently. The only restrictions placed upon the legislatures are those contained in a Congressional act of February 2, 1872, which provides that the districts shall be composed of contiguous and compact territory and contain, as nearly as practicable, an equal number of inhabitants.

"Gerrymandering."

The desire to secure party advantage has often led to the manipulation of district lines in a most unfair manner. We have good examples of this method in the redistricting of some of the States after each census. Thus, portions

of a State containing large numbers of voters of the opposing party have been annexed to a district which could not be carried by the party having a State majority. Or at times territory, consisting either of one or more counties or a portion thereof, which had voters that could be spared by the majority party in one district has been united with some other district where the majority of their adversaries could thus be offset. Territory has been regarded as contiguous when it touched another portion of the district at one point. As a consequence, peculiarly constructed districts are to be found in some of the States, such as the "monkey-wrench" district of Iowa. When the Representative districts of a State have been in this manner the objects of political manœuvring or when a similar system has been used in forming State legislative or judicial districts, the State is said to have been "gerrymandered." *

Origin of "Gerrymander." Bryce, American Commonwealth, I, 121.

The origin of the expression is described in the following: "So called from Elbridge Gerry, a leading Democratic politician in Massachusetts (a member of the Constitutional Convention of 1787, and in 1812 elected Vice-President of the United States), who, when Massachusetts was being re-districted, contrived a scheme which gave one of the districts a shape like that of a lizard. A noted artist entering the room of an editor who had a map of the new districts hanging on the wall over his desk, observed, 'Why, this district looks like a salamander,' and put in the claws and eyes of the creature with his pencil. 'Say rather a Gerrymander,' replied the editor, and the name stuck." Other writers have maintained that Mr. Gerry was opposed to this scheme.

Supplementary Questions and References

1. What is the number of the present Congress? Give the times for the beginning and end of each session.

2. For a discussion on the time when Congress should convene, see Beard, American Government and Politics, pp. 248, 249.

* City wards have also been "gerrymandered."

3. It is not required by law that a Representative should reside in the district that he represents, but it is an established custom. What are its advantages and its disadvantages? Compare with the English practice. Bryce, American Commonwealth, I, chapter 19, 186–190.

4. Do you favor an educational qualification for voters? Why?

5. Were the States mentioned on pp. 125–126 justified in the enactment of their suffrage laws?

6. Should section 2, Amendment XIV, be enforced? Rev. of R's, 22 : 273–275; 653, 654; 25 : 716–718; Forum, 31 : 225–230; Outlook, 70 : 791–792.

7. What are the points of likeness and of difference between the House of Representatives and the House of Commons? N. Am. Rev., 170 : 78–86.

8. How large is your Congressional district? Compare its area with that of other districts in your State. What is its population? Compare this with the ratio of apportionment; also with the population of other districts in your State. Compare the number of votes cast for Representative in your district with the number cast in districts of other States in different sections of the country. How do you account for the variations? See New York World Almanac.

9. Give the number of Representatives to which your State is entitled. Was the number increased in the last apportionment?

10. With the admission of New Mexico or of Arizona how many Representatives would be added? How many Senators? Why were these territories not admitted by the 61st Congress (1911)?

11. For "gerrymandering," effects, and remedy, see Outlook 97 : 186–193; Beard Readings in American Government and Politics, 219, 220.

12. For accounts of the method by which a census is taken, see American Census Methods, Forum, 30 : 109–119; Merriman, Census of 1900, N. Am. Rev., 170; Durand, Census of 1910, Rev. of R's, 41 : 589–596; 404–405.

13. What were the results of the Census of 1910; present population; distribution of the population; and growth during the century? World's Work, 21 : 13838–13842.

14. Who are some of the best known Representatives and Senators? For what reasons are each noted?

15. Who are the Senators from your State? When was each elected?

16. Give the names of the Speaker, and of the President *pro tempore*.

17. Should Senators be elected by the votes of the people? Beard, Readings in American Government and Politics, 226–233; Outlook, 97 : 351, 352; 389–392; Haynes, The Election of Senators (arguments for), 153–210; (arguments against), 211–258; Rev. of R's, 42 : 133–140; Forum, 42 : 142–147; Indept., 63 : 847–851; 64 : 1311–1312; 66 : 267–268.

18. The power of the Senate, N. Am. Rev., 174, 231–244; Reinsch, Readings on American Federal Government, 146–155.

19. Ought there be an amendment to the Constitution providing for uniform qualifications for suffrage?

CHAPTER XV

POWERS AND DUTIES OF THE SEPARATE HOUSES

I. Impeachment.

Article II, section 4. *The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.*

Article I, section 2, clause 5. *The House of Representatives shall . . . have the sole power of impeachment.*

Section 3, clause 6. *The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.*

Section 3, clause 7. *Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law.*

Who may be impeached. The term "civil officers" is here used in distinction from military and naval officers, who are tried for offences by courts-martial. Members of Congress may not be impeached. It has been determined that they are subject only to the rules of the house of which they are members.

What constitutes high crimes and misdemeanors has never been accurately defined, but they are understood

to be those offences of an official nature which the ordinary courts of law cannot reach; such as, abuse of power, acceptance of bribes, or intemperance.

The method of trial.

The House of Representatives has the sole power to prefer charges of impeachment. These take the place of the indictment in the ordinary criminal trial. The Senate has the sole power to try all impeachments. The Chief Justice of the United States must preside in the trial of the President, while in ordinary trials the presiding officer is the Vice-President or the President *pro tempore*. The manner of conducting the trial resembles that of a trial by jury. Each Senator is sworn to be impartial in his decision; managers from the House present the charges at the bar of the Senate; the accused may answer in person or through his counsel; and witnesses are examined. When all the evidence has been submitted, the Senate deliberates on the case in secret session. In order that impeachment may not be used for party purposes, it is provided that there shall be no conviction except by a two-thirds vote. During the progress of the trial, the officer impeached is permitted to perform his regular duties.

Judgment on conviction.

No action can be taken by the Senate other than to remove the convicted official from office and to disqualify him from holding any office under the United States. If the offence upon which the conviction is secured is one punishable by law, the person is liable to a regular trial in the courts. The President may not grant a pardon in cases of impeachment.

Impeachment trials.

Largely because of the cumbersome method of procedure, the number of impeachment trials has been small. These have been the following: Senator William Blount in 1799; Judge John Pickering of the United States Supreme Court in 1803; Judge Samuel Chase of the United States Supreme Court in 1804; Judge James H. Peck of the Federal District Court in 1830; Judge W. H. Humphries of the United States District Court in 1862; President Andrew Johnson in 1868; Secretary of War W. W. Belknap in 1876; Judge Charles Swayne of the United States District Court in 1904; Judges Pickering and Humphries were convicted.

II. The Quorum, Journal, and Freedom of Speech.

Section 5, clause 1. Determination of membership and quorums.

Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

It is obvious that the power to judge of the elections, returns, and qualifications of members of a legislative body, must exist somewhere. This right could not be better placed than in the houses constituting the legislative body, for by the exercise of this right the independence and purity of the houses are preserved.

Contested seats in the Senate.

In the Senate the question raised in a contest usually applies to whether a Senator has been duly elected. Numerous cases have been tried upon the ground that elections have been secured by bribery and corruption. Among the most noted contests was that which arose in 1911, over the report of the Senate investigating committee in the case of Senator Lorimer of Illinois. A majority of the committee reported that the charges of bribery had not been proven. In the discussion before the Senate it was maintained by the leading advocates for Mr. Lorimer's right to his seat in the Senate that purchased votes were not to be counted and that he had received a majority of unquestioned votes in the legislature. This view was characterized by the opposition as dangerous and alarming. Finally, after a debate extending over many days in which the foremost Senators took part, the minority report, which asserted that Senator Lorimer, of Illinois, was not "duly and legally elected," was lost by the vote of 46 to 40. The outcome will doubtless do much to strengthen the demand for the election of Senators by popular vote.

Contests in the House.

In the House the name of the person possessing the certificate of election signed by the Governor of his State is entered on the roll of the House, but the seat may still be contested. Many cases of contested elections are considered by each new House. Each of the cases when presented to the House consumes from two to five days which might otherwise be used for the purposes of legislation. The law provides that not more than $2,000 shall be paid either of the contestants for expenses, but even then, it is estimated, these contests cost the government, all told, $40,000 annually. When the decision is rendered by the House, the vote is, in most cases, strictly on party lines, regardless of the testimony. In view of these facts, it has been suggested that the Supreme Court should decide all contested elections.

What constitutes a quorum.

Fifteen members, including the Speaker, may be authorized to compel the attendance of absent members. This is accomplished as follows: the doors of the House are closed, the roll is called, and absentees noted. The Sergeant-at-arms, when directed by the majority of those present, sends for, arrests, and brings into the House those members who have not a sufficient excuse for absence. When a quorum * is secured the business is resumed.

Section 5, clause 2. Rules and discipline.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

The right to make its own rules is usually intrusted to every assembly, and this power should be vested in the houses of the National legislature. But rules would be without value unless there were some means of punishment provided for those who disregard them. It is also desirable that, in extreme cases, there should be some method of redress. The two-thirds vote necessary to expel a member seems wise in order that expulsion may

* For the power of the Speaker in counting a quorum, see p. 176.

not be easily used in the interest of a faction or of a political party.

Section 5, clause 3. The Journal.

Each House shall keep a journal of its proceedings and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the journal.

By means of the Journal, read at the opening of each day's session, the official record of the proceedings of Congress is made known to the public. The debates do not appear in the Journal, but are published each day in the "Congressional Record."

The yeas and nays.

Another means of keeping constituents informed on the position of their Representatives is through the recording in the Journal of the vote of each member upon the demand of one-fifth of those present. In voting by the "yeas and nays," the Clerk calls the roll of members and places after each name, "yea," "nay," "not voting," or "absent." The Senate rules specify this as the only method of voting. (Other methods of voting are indicated on p. 150.)

Section 5, clause 4. Power to adjourn.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Without such a provision it would be possible for either House, by adjourning, to block effectually all legislation. If there is a disagreement between the two Houses with respect to the time of adjournment, the President may adjourn them to such a time as he thinks proper. He is also authorized by law to convene Congress at some other place than Washington, in case of the existence there of contagious disease or of any other conditions which would place life or health in jeopardy.

Section 6, clause 1. Compensation and freedom from arrest.

The Senators and Representatives shall receive a compensation for their services to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

Salaries paid Senators and Representatives.

The question, ought compensation to be given members of legislative assemblies or should their services be regarded as honorary, gave rise to a heated discussion in the Constitutional Convention. Members of the State legislatures were receiving salaries, but members of the English Parliament were not. Finally, the American practice prevailed, for it was thought that men of ability, though poor, might thus be enabled to enter the National legislature, and that the position might be made more attractive than that of membership in a State legislature.

The compensation of Senators and Representatives from 1789 to 1815 was six dollars a day and thirty cents for every mile travelled, by the most direct route, in going to and returning from the seat of government. Prior to 1907, this amount was changed several times by act of Congress. The compensation then agreed upon was $7500 *per annum*, with mileage. An allowance is also made each member for clerk hire and stationery. To many this seems a large salary, but the great expense of living in Washington renders the amount quite inadequate. Many members make a financial sacrifice in accepting a seat in Congress.

Privilege from arrest.

As already noted, a member of Congress may be punished for an offence by the House to which he belongs. It is manifest that he should be free from arrest, except in case of treason, felony, and breach of the peace; otherwise his district might, sometimes under false charges, be deprived of representation, and National legislation be interrupted.

Freedom of debate.

Freedom of speech is quite as important in a representative government as freedom of person. This privilege extends to all utterances used in the course of legislation. Since all Congressional debates are published, it is held to apply to them also.

Section 6, clause 2. Disqualification to hold other offices.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.

The purpose of this provision, which was discussed at considerable length in the Constitutional Convention, seems to have been to remove the temptation on the part of Congressmen to create offices or to increase the emoluments of those already existing in order to profit by such legislation. It was also thought necessary to guard against bargaining. The President, in order to secure certain legislation, might agree to appoint to offices thus created Congressmen who aided him.

The exclusion of United States officials from seats in Congress was due to the desire of appeasing State jealousy, which asserted that the National government would secure an undue influence over the State governments. It is advocated, with good reason, that members of the Cabinet should be privileged to take part in the discussion of measures in Congress which pertain to their own departments. Alexander Hamilton asked for this privilege, but it was refused because of the fears of his influence. The precedent thus established has always been retained. But since executive officers are often invited to present their views before committees of Congress, they may exert great influence upon legislation.

CHAPTER XVI

PROCEDURE IN CONGRESS

THE first step in the enactment of a law is the introduction of a bill. In the House of Representatives the bill, indorsed with the name of the member introducing it, is placed in a basket on the Reading Clerk's desk. It is then referred to a committee by the Parliamentary Clerk. In the Senate, the member introducing a bill rises, is recognized, and asks leave to introduce it.

FORM OF A BILL

56TH CONGRESS
1ST SESSION

H. R. 6071

[Report No. 376.]

IN the House of Representatives

JAN. 12, 1900.

Mr. Loud introduced the following bill, which was referred to the Committee on Post-Offices and Post-Roads and ordered to be printed.

FEB. 19, 1900.

Reported with amendments, referred to the House Calendar, and ordered to be printed.

A BILL

To amend the postal laws relating to second-class mail matter.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That mailable matter of the second class shall embrace

The introduction and reference of bills take place during sessions of the Houses, but the bills do not come up for consideration until the committees report them back.

The committee system.

Before proceeding further with the history of a bill we must notice a most important feature of Congressional machinery—namely, the committee system. Almost every deliberative body finds it convenient to intrust certain parts of its business to committees. When the assembly is large, and especially when the mass of business is great, committees are absolutely necessary. After a committee has given consideration to any matter in its charge, it submits to the main body a report recommending whatever course of action it deems wise. The assembly may either adopt or reject this report. In Congress many thousands of bills are introduced in a single session. By far the greatest part of the work of Congress, therefore, must be done in committees. To these committees all bills must be referred. The chairman of each committee and a majority of its members are selected from the party having a majority in the house where the committee originates.

For many years it was the custom that committees in the House should be appointed by the Speaker; but in the first session of the 62d Congress (a special session meeting in April, 1911) a new rule was adopted under which all committees are elected. In the Senate, also, committees are elected; that is, the Senators of each party, acting in separate caucuses, select the members who are to serve on the various committees.

In the 60th Congress 28,000 bills were introduced in the House and 9,500 in the Senate. In the next Congress there were 61 House committees, varying in membership from 5 to 19. In this Congress 33,015 bills were introduced in the House. In the 62d Congress the principal committees consisted of 21 members each—14 Democrats and 7 Republicans. Among

the most important standing committees of the House are the following: Ways and Means (the most important because it has charge of bills for raising revenues), Appropriations, Judiciary, Interstate and Foreign Commerce, Post-Offices and Post-Roads, Military Affairs. The number of committees in the Senate was 72 in the 61st Congress. The names of a few are: Finance (corresponding to the Committee on Ways and Means in the House), Agriculture, Commerce, Foreign Relations, Indian Affairs, Railroads, Public Lands.

Both in the House and in the Senate, every member is on some committee, and some members have places on several committees.

Power of committees over bills.

Over the bills placed in their charge, committees have a great degree of control. "They may amend a bill as they please; they may even make it over so entirely that it is really a new bill, reflecting the views of the committee rather than the views of the originator." The power of House committees to kill bills by refusing to report them was exercised for many years, until it was taken away, in 1910, by a new rule under which a majority of the House may discharge a committee from further consideration of a bill. It may then be brought before the House in spite of the committee's opposition.

The influence of committees in determining what laws shall be passed is further shown by the following facts: (1) Their sessions are secret and their proceedings are seldom published. Committees frequently conduct "hearings," however, which are generally public, and at which testimony and arguments are presented by both friends and opponents of a measure. (2) Only a very small proportion of the bills referred are ever reported back to the House. (3) The House really deliberates upon only a few of the most important bills that are reported. It accepts the recommendations of the committees as to the proper disposition of the great majority of these bills, and they are passed or rejected without question or de-

bate. About five or ten per cent. of the measures introduced become laws, and only a small number of these are bills of importance.

Responsibility of committees

Only in small measure, therefore, do we have, in the House, legislation by deliberation and debate.* The power intrusted to the committees is so great that nothing but the personal integrity of the Representatives can prevent its abuse. Corrupt influences may easily be brought to bear upon them, for there are always present in the "lobby" men whose sole aim is to influence legislation in this way. Since the committees are held responsible only in a slight degree for the business intrusted to them, the detection of such evils is very difficult.

The calendars.

When a bill is reported back to the House it is placed on one of three calendars: the first, known as the "Union Calendar," contains all bills for raising revenue and all bills of a public character appropriating money; the second, or "House Calendar," all other bills of a public character; the third, all private bills. Bills are not ordinarily brought before the House for discussion in the order in which they stand on these calendars. Whether a bill will ever get farther than the calendar depends to some extent upon its importance and merits, but chiefly upon the skill and influence of the member who has charge of it. This is generally the chairman of the committee that reported the bill.

The above statement is subject to modification in two ways. (1) A fourth calendar, known as the Unanimous Consent Calendar, contains bills that were originally upon the first two calendars mentioned, but which have been transferred to it at the request of a member. When this calendar is before the House, bills may be called up in the order in which they stand upon it, by unanimous consent; that is, if no member objects. (2) Another rule (since 1910) establishes "Calendar Wednesday," which will be explained on p. 149.

* There is much debate, however, in connection with appropriation bills.

Like all similar bodies, the House has an "order of business" laid down by the Rules. (1) After the prayer by the chaplain each day's business is opened by the reading and approval of the Journal. (2) Then the Speaker lays before the House messages from the President, reports and communications from heads of departments, etc., which are at once referred to special or standing committees. (3) Next in order comes unfinished business. (4) The rules provide that on all days except the second and fourth Mondays of each month,* one hour shall be given to a "call of the committees." During this "morning hour" "each committee when named may call up for consideration any bill reported by it on a previous day." At the expiration of one hour the House may go into "Committee of the Whole" (see pp. 150–151); or, the "morning hour" *may* continue a longer time. Beyond this order of business the procedure is too complicated for brief statement.

The "order of business."

The theory of the rule requiring a call of committees daily has not been observed in practice, so that there has been slight chance that a bill could be called up, except by consent of the Speaker. This condition was altered in 1910 by the rule requiring that on Wednesday of each week the list of committees *must* be called in their order, and that bills on the Union and House Calendars may then be considered.

It is during the call of the committees that a member in charge of a bill may secure *recognition*, that is, the right to speak. He thus brings his bill before the House.†

How a bill gets before the House.

* On these days the business reported by the Committee on the District of Columbia has precedence.

† A previous arrangement with the Speaker, or with the Committee on Rules, is necessary to secure recognition, except on "Calendar Wednesday." or for the consideration of bills on the Unanimous Consent Calendar, or those which have been taken out of the hands of committees. (See discharge of committee, p. 147.)

The consideration of this bill may occupy the entire hour, during which the member has *control of the floor*. After speaking, he generally *yields the floor*, temporarily, to others, both friends and opponents, who debate upon the bill or endeavor to amend it.

Methods of voting.

Before a bill is brought to a final vote the Clerk reads it three times: the first time by title, the second time in full, and the third time by title only, unless the reading in full is demanded by a member. When the Speaker puts the question of the passage of a bill he says, "As many as are in favor say *aye*"; then "As many as are opposed say *no*." If he doubts which side has prevailed, or if a *division* is called for, a rising vote is taken. If he is still in doubt, or if a count is demanded by at least one-fifth of a quorum, two members are appointed tellers; the members voting in the affirmative pass between the tellers and are counted; then those favoring the negative. If the question is one that requires the *yeas* and *nays*, or if this method of voting is demanded by one-fifth of those present, the roll is called. Each member who wishes to vote responds when the Clerk reads his name. This process consumes half an hour or more. After the roll-call is completed, the Speaker announces the *pairs*. Members who belong to different political parties, or members of the same party, may agree that they shall be recorded on opposite sides of a question, whether they are present or not. Pairs may be arranged for particular votes only, for a given day, or for a longer time. This device enables a member to be absent from the House without feeling that his vote is needed, while at the same time a record has been made of his views.

Pairs

Committee of the Whole.

An important method of procedure remains to be described. At any time after the "morning hour," a motion is in order that the House go into "Committee of the Whole House on the State of the Union." Certain bills,

as those levying taxes and appropriating money, must be considered in Committee of the Whole. The Speaker leaves the chair, calling another member to his place as chairman. In Committee of the Whole great freedom of debate is allowed. Consequently, a bill receives much more discussion than under the general order of business. When the debate is closed, the committee *rises and reports;* that is, the Speaker returns to his chair and the chairman reports to the House whatever action has been agreed upon in the Committee of the Whole. The House then adopts this report. It is under this procedure that most of the long speeches reported in the "Congressional Record" are delivered. Frequently, instead of actually delivering his speech, a member merely makes a few remarks and asks *leave to print* the rest of it. Members frequently get reprints of their speeches (whether these were actually delivered or not) for distribution among their constituents and for campaign literature.

The bill in the Senate.

We have now followed the course of a bill from its introduction in the House, through the committee and the debate which it may receive, to the final vote on its passage. When a bill has passed the House it receives the signatures of the Speaker and the Clerk and is carried to the Senate. Here the presiding officer immediately refers it to a committee. The process of passing bills in the Senate is in general the same as in the House. Some differences in procedure will, however, be noted later. Each house has the right to amend a bill that has already passed the other house. If the house in which the measure originated does not accept the amendment the bill fails to become a law. Or, a *conference committee* may be arranged, which is composed of a few (generally three) members from the House and Senate committees that have previously considered the bill. If the conference committee succeeds in arranging a satisfactory compromise, each house will pass

Conference committees.

the bill in the form agreed upon and reported by this committee.

The power of enacting laws is not vested solely in Congress, but it resides to some extent in the President also. The manner in which the President may exercise his legislative authority is now stated.

Article I, section 7, clause 2.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bills shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law.

Reasons for the veto power.

The President is expected to use his veto power whenever, in his opinion, a bill of Congress is unwise or unconstitutional. The division of the legislative power between these two departments of government is in accordance with the principle of "checks and balances" which we may find exemplified in many other parts of our National system. Hasty action on the part of Congress, or an attempt to encroach upon the jurisdiction reserved to the other departments or to the States, may be opposed by the

Presidential veto. The veto power is not absolute, however, since a determined majority of two-thirds of the members in both houses may prevail in spite of it. This feature of the system is based on a sound principle, also, since it must be presumed that the will of the people is more adequately represented in a Congress that is constituted in this way than in the person of the President alone.

Vetoes by various Presidents.

Before President Johnson, the largest number of bills vetoed by any one President was twelve, by President Jackson. Disagreement with Congress on the *reconstruction* policy accounts for President Johnson's twenty-one vetoes. Some of the bills to which he refused assent were important and were afterward passed over his veto. President Grant vetoed forty-three bills, one of which (the so-called "inflation bill") was of great consequence. President Cleveland vetoed three hundred and one bills in his first administration, the total number of vetoes in our history before that time having been but one hundred and thirty-two. This is largely accounted for by President Cleveland's refusal to sign certain private pension bills, of which a great number are passed by every Congress.*

The "pocket veto."

The President may cause a bill to fail by neither signing nor vetoing it during the last ten days of a session. The term "pocket veto" has been applied to this method of defeating legislation.

Lest Congress should seek to evade the necessity of submitting its acts to the President, the following clause of the Constitution prohibits the enactment of legislation under any other title than that of a bill.

Section 7, clause 3.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of

* For Johnson's vetoes, see American History, 422, 423; Grant's, *ibid.*, 445; Cleveland's, *ibid.*, 465–466.

the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Unifying forces in the House.

Because the House represents the people more directly than does the Senate, and because it is, generally speaking, the more interesting body to observe, we shall now look farther into its workings to discover how its action is really controlled. When one considers the immense mass of business laid before the House and the more than fifty committees that work independently of one another, each member and each committee endeavoring to secure the passage of particular bills, it seems a wonder that any unity of purpose or harmony in legislation can be attained. But forces are at work beneath the surface to bring order out of the apparent chaos.

The power of the majority.

The first of these forces is the power of the majority. Party caucuses and conferences—that is, meetings of the Representatives belonging to one party—are of frequent occurrence, especially if the majority is small and it becomes necessary to present a united front to the opposition. Those who attend and participate in a caucus are expected to abide by the decision of the majority as to the measures that must be passed or rejected in Congress. But no such rule binds members who attend a party conference. In this way a more or less consistent policy may be carried out. The power of the majority may also be seen at work in the committees. The majority of a committee sometimes frames a bill without consultation with the minority members. The latter are called in when the measure is complete, and their views are given a hearing, but they really have no voice in the matter. They may, however, present a minority report to the House.

A second force tending to unify the action of the House is the authority given to the Committee on Rules. This committee is composed (since March, 1910) of ten members, six being of the majority and four of the minority

party. They are elected, and the Speaker cannot be a member.

Committee of Rules.

It will be remembered that with certain exceptions (see p. 149) bills are not considered in their order on the calendars. Otherwise, this committee decides which bills shall be taken up, what length of time shall be given to each, and when each shall come to a vote. It thus makes a sort of program for the House and so decides the fate of a great many bills. Of course the Committee on Rules must be sustained by a majority of the House; but the House generally looks to this committee for leadership.

The power of the Speaker.

A third force tending to unify the action of the House is the power of the Speaker. Since the Speaker represents the majority, he is dependent upon it for the exercise of his power. But once elected, this officer is regarded as the leader of the majority and his influence is very great in determining party policy. The Speaker's power is exerted in several ways:

Filibustering.

(1) When the minority foresee that they will be beaten on an important question they sometimes resort to *filibustering* or *obstructive tactics*. They endeavor to delay action in the hope that the majority will be driven by sheer exhaustion to compromise. They accordingly consume time by making long speeches. But since the Committee on Rules (sustained by a majority of the House) may fix the time for a vote, this method of filibustering is not always effective. Again, the minority may attempt to delay action by making *dilatory motions* (such as a motion to adjourn) and then calling for the *yeas* and *nays*. Since each roll-call occupies half an hour or more, this method has sometimes in the past been very successful. But in recent years the Speaker has been given authority to decide when, in his opinion, such motions are intentionally dilatory, and to refuse to entertain them. At such times, therefore, the Speaker sets aside the ordinary rules of

parliamentary practice and governs the House arbitrarily; but it must be remembered that he is executing the will of the majority.

Counting a quorum.

Speaker Reed used an effective method to stop filibustering in the 51st Congress, when the Republican majority was very small. In order to prevent the passage of bills, members of the minority would refuse to vote when the roll was called. As it was often impossible to secure the attendance of all members of the party in power, the roll-call would show less than a majority "present." Hence business would be stopped under the point of order "no quorum." At such a juncture, Speaker Reed directed the clerk to count as present members sitting in their seats who had not voted. Thus a quorum was secured and bills were passed. The Supreme Court has pronounced this procedure legal, and subsequent Congresses have followed the practice.

Recognition.

(2) Much of the power given to the Speaker would be useless but for the power of *recognition*. As in other assemblies, before any one can speak he must be recognized by the chair. The Speaker may recognize whom he pleases, not necessarily the one who first addresses him, except on "Calendar Wednesday," and when bills are called up from the Unanimous Consent Calendar, and in the case of bills taken out of the hands of a committee. Consequently, at other times if a member wishes to push his bill through the House, it is necessary to consult the Speaker and obtain his consent. He will then be recognized at the time agreed upon. By a similar arrangement other members will secure the right to debate the bill.

Until the long session of the 61st Congress (March, 1910), the Speaker's power also included that of appointing all committees, including the Committee on Rules, and he was chairman of that committee. These facts gave him almost dictatorial power over the bills that should come up for discussion and over their fate as well. This power as exercised by Speaker Cannon resulted in a revolt in which a number of Republican members (known as "insurgents") joined with the Democratic Representatives to

outvote the "regular" Republicans, and thus secured amendments to the Rules. The constitution of the Committee on Rules was changed (see above) and the Speaker was made ineligible for a position upon it.

It was claimed that these changes were necessary to take the control of the House out of the hands of a small body of men. On the other hand, the previous arrangement was regarded by some as essential to prevent filibustering and to expedite business.

Comparison of Senate and House procedure.

Procedure in the Senate differs from that in the House in three important respects. (1) The presiding officer, whether he be the Vice-President or the President *pro tempore*, has less power than the Speaker. He is more impartial in his recognition of both sides, therefore filibustering is easier in the Senate than in the House.

(2) There is less restriction on the freedom of debate in the Senate; consequently important measures are passed less promptly than in the House. In fact, there is no means by which debate can be closed in the Senate.

(3) The Senate has a higher standard of decorum than that which prevails in the House. Senators are expected to heed carefully one another's rights and wishes, and to avoid extreme exhibitions of party spirit. The Senate is, therefore, a more quiet and orderly body than the House; in it angry debate and violent behavior are of rare occurrence. In its methods of procedure the Senate is more deliberative and less business-like than the House.

Cabinet system of government.

In State legislatures throughout the Union the method of procedure is substantially the same as that which we have seen at work in Congress. But this system, sometimes called the "Committee system," is found nowhere else. Every national legislative body in the world except our Congress works under the "Cabinet system" of government. This may be best seen in the English Government, where it was first developed.

The English Cabinet system.

The supreme legislature of England is Parliament, composed of the House of Commons and the House of Lords. Although England is nominally a kingdom, the monarch has little real

authority. The actual executive is the *Cabinet;* at its head is the Prime Minister, who corresponds in many ways to our President. In England the legislative and executive departments are united; for the members of the Cabinet must be members of Parliament, and the Prime Minister is always the leader of the political party that has a majority in the House of Commons. Nominally the monarch chooses the Prime Minister, but in reality he has no choice. The members of the Cabinet, numbering fifteen or twenty, are executive officers. Each presides over a department and controls the administration of its affairs as Cabinet officers do in the United States. At the same time, it is the duty of Cabinet ministers to participate in the legislation of Parliament: (1) by framing and introducing all important bills, and (2) by pushing these bills through Parliament by debate and otherwise.

The Prime Minister "leads" the majority party in the House of Commons; or, if he is a member of the Lords, another Cabinet member is leader of the Commons. The opposition party likewise has its leader in each house. The "Opposition" tries to hamper or defeat the measures of the Government.

The length of a Congress in the United States is fixed at two years. A term of Parliament may last seven years, but Parliament may be dissolved and a term ended at any time. The way in which this comes about is the most essential feature of Cabinet government. The Cabinet, we have seen, is put into office by the majority in the House of Commons, and it will retain its position as long as it is sustained by that majority. If, however, its policy proves to be unpopular, or its administration weak, some of its former friends will withdraw their support. There may then be passed a vote of "lack of confidence"; or, more usually, the Cabinet fails to pass an important bill because it no longer commands sufficient votes in the House of Commons.

Dissolution of Parliament.

In either case the Cabinet resigns, Parliament is dissolved, and a general election is held at which the people elect new members of the House of Commons. In this new house, the party that has just been retired from power may be restored if the people sustain its policy; if they do not, the opposite party will have a majority in the House of Commons and its leader will become Prime Minister.

Responsibility.

Certain advantages are claimed for this system over the Congressional or Committee system. (1) It is said that the party in power is more directly responsible to the people because its

tenure of office is not fixed, but liable to termination at any time. "Government," as the governing officials are called, will therefore watch public opinion very closely and try to avoid all unpopular measures. Moreover, the people watch the ministry closely because they may be called upon at any time to approve or condemn its policy by electing a new House of Commons. For the Congressional system it is claimed that these same advantages are secured by the frequency of our elections. The hope of re-election creates responsibility.

(2) Under the Cabinet system the harmony of the legislative and executive departments is certain. The House of Lords may not agree with the Commons, but its power is very much less than the power of the Senate in the United States. The Lords may delay, but they will never defeat an important bill which the Commons, backed by the people, are determined shall pass.* In the United States the President may not be of the same party as the majority of Congress; or, being of the same party, he may have very different views. There will consequently be friction and a failure to harmonize the action of these two departments. On the other hand, it is urged that a Cabinet is undertaking too much when it assumes both legislative and executive functions. Attention is also called to the fact that our legislative and executive are not completely separated. Certain functions are shared between them. Moreover, it is quite customary for Congressmen and committees to consult heads of departments and other officials while framing bills. Harmony.

(3) In Parliament, the leadership of certain men is more clearly recognized and more consistently followed than in Congress. Consequently, the measures by which a party carries out its policy have a certain unity of purpose and harmony among themselves. The Committee system, English writers say, discourages leadership, by the division of responsibility for legislation; it makes possible poorly constructed and inconsistent laws which do not pretend to be parts of a deliberate governmental policy. Defenders of the Committee system point to the unifying influence of the party caucus and to the work of conference Leadership.

* The rejection by the Lords of the Commons' budget bill (for raising revenue), in 1910, was followed by the proposal to remove the power of the upper house to veto bills. This veto may also be prevented by the action of the King in appointing (upon the advice of the ministry) such a number of new peers, with the right to sit in the House of Lords, as will outvote the opponents of any measure in that house.

committees in harmonizing differences between the houses. Moreover, it is claimed that the Speakership furnishes a sufficient element of leadership and that more is not desirable.

Supplementary Questions and References

1. From the Congressional Record one may learn the forms used by members of Congress in addressing the chair and each other; also the forms of response used by the Speaker and the President of the Senate.

2. In the Congressional Directory will be found lists of the standing committees of each house, as well as select and joint committees; diagrams of the city of Washington, the Capitol building, and the floors of the houses showing the seats occupied by the members; also biographical sketches of Senators and Representatives.

3. What difference is there in the granting of recognition to members in the Senate and House? Harrison, This Country of Ours, 45–48.

4. One way of accounting for the large number of bills introduced into Congress is discussed in Bryce, I, 136–138.

5. What appearance does the House of Representatives make when at work? Bryce, I, 142–148.

6. What are the relations of the two houses of Congress? Bryce, I, chapter 18.

7. The veto power. Bryce, I, 58–61; Cooley, Principles of Constitutional Law, 49, 166–169.

8. How are obstructive tactics carried on? Alton, Among the Law Makers, chapter 20.

9. Why is there little debate in the House of Representatives? Wilson, Congressional Government, 72–73, 86–102.

10. Compare the Speaker of the House of Representatives with the Speaker of the House of Commons. Bryce, I., 138–141.

11. The best descriptions of Congressional procedure are found in Bryce, I, chapters 10–16; Wilson, Congressional Government, chapters 1, 2, 4; Follett, The Speaker; McConachie, Congressional Committees; Beard, American Government and Politics, chapter 14; Making laws at Washington, Cen. Mag.,

42 : 169–187; Senate procedure, World's Work, 11 : 7060–7065; 7206–7211.

12. On the powers of the Speaker, see Forum, 41 : 344–350; N. Am. Rev., 188 : 495–503; 189 : 233–241; Rev. of R's, 39: 465–474; Cen. Mag., 56 : 306–312; Hart, Essays on American Government, chapter 1, The Speaker as Premier.

13. The revolt of the Insurgents and the revision of the Rules. Outlook, 94 : 635–640; 750–754; Rev. of R's, 41 : 396–399; N. Am. Rev., 191 : 510–515.

14. The English Cabinet system is best treated in Bagehot, The English Constitution; Wilson, The State; Moran, The English Government.

15. For comparisons of the Cabinet and Committee systems consult Bagehot, 84–100; Bryce, I, 147–153, 154–156, 168–173, 286–297; Wilson, Congressional Government, 72–73, 86–102, 115–124, 318–324; Fiske, the Critical Period of American History, 289–300.

CHAPTER XVII

NATIONAL FINANCES

Finances of the Confederation.

NOTHING revealed more completely the fatal weakness of the government under the Articles of Confederation than its failure to exercise effectively the power of taxation.* While the Articles provided that the expenses of the general government should be paid out of a common treasury "which shall be supplied by the several States," the taxes were to be "laid and levied by the authority and direction of the legislatures of the several States." In practice, each State contributed as much or as little as it pleased. The general government made "requisitions" upon the States for certain amounts, but it had no means of compelling the legislatures to raise their quotas. The failure of the efforts that were made to amend the Articles so as to give Congress power to levy import duties, marks the complete break-down of the government's finances. There was needed a system under which the National authority might be exerted directly upon the individual citizens, without the intervention of State authority. This was secured by the following clause of the Constitution.

Article I, section 8, clause 1.

The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.

* See American History, 184, 193–194.

Coupled with this grant of power was a prohibition: *No tax or duty shall be laid on articles exported from any State.* Section 9, clause 5.

The forms of taxation most employed by the National government are known as duties * and excises. The duties which Congress is empowered to levy are taxes on goods imported into the country. The collection of duties takes place at custom-houses situated at the "ports of entry." There are more than one hundred and fifty ports of entry distributed throughout the United States; the greater part, though not all, are seaport cities. Each custom house is in charge of a collector. Duties are of two kinds, specific and *ad valorem*. Specific duties are fixed amounts levied on certain units of measurement of commodities, as the pound, yard, or gallon. For example, under the tariff law of 1909 the duty on tin plate was one and two-tenths cents for each pound. *Ad valorem* duties are levied at a certain rate per cent. on the value of the articles taxed. The law of 1909 laid a duty of 60 per cent. on lace manufactures. On some articles both kinds of duties are collected; under the law just mentioned, the duties on carpets and rugs were 10 cents per square foot and 40 per cent. *ad valorem* in addition. Kinds of duties.

At New York, where by far the largest part of our importations are entered, two thousand officers and clerks are employed in the custom house. The method of collecting duties may be briefly described. When goods are purchased in a foreign country, an invoice of them, stating descriptions and prices, is filed with the United States consul† in the district where the purchase is made. The consul sends a copy of the invoice to the officials of the custom house at the port of entry to which the goods are shipped. Upon their arrival in the United States, the cases are opened and the goods are examined to see that they The collection of duties.

* "The terms duties and imposts are nearly synonymous."—Cooley, Principles of Constitutional Law, 54.

† See page 247.

correspond in amount and prices to the invoice record. If, in the judgment of the custom house appraisers, the goods are valued too low, the valuation will be raised. In case of great undervaluation, a fine is imposed, and in extreme cases the goods are confiscated.

Goods in bond.

If an importer does not wish to sell his goods immediately, they may be stored in a "bonded warehouse" which is under the supervision of Government officials. The owner agrees, under bond, to withdraw the goods and pay the duties (or else to export the goods) within three years. By a similar arrangement, goods may be shipped "in bond" from a port of entry to a "port of delivery."

Passengers on steamships coming from foreign countries are required to declare what dutiable goods they have among their baggage. Upon landing, their baggage is examined; trunks and valises are opened, and in suspected cases the persons of travellers are searched for concealed dutiable goods. The temptation to undervaluation and to smuggling, in order to escape this form of taxation, is so great that constant vigilance is necessary at custom houses and along the borders of the United States to prevent these frauds. Special agents and revenue cutters are employed to detect violations of the law.

Smuggling.

Tariff laws

A schedule of rates of duties is called a tariff. It is evident that the importer adds the amount paid as a duty to the price of an imported article when he sells it. If a higher price is caused in this way,* this may deter importation and encourage the production of such articles in this country. Consequently, high rates of duties may have a decided influence upon the industries of a country. When tariff rates are fixed without reference to the way in which they may affect industries, we have a "tariff for revenue"; the sole object in view is the raising of a certain amount of revenue. In a "protective tariff" law, on the other hand, the rates are fixed with the purpose of encouraging certain industries; they are made so high that it will be less profitable to import the

* It may happen that the foreign producer will lower his prices sufficiently to counterbalance the effect of the duty in this country.

articles. The question, Which tariff policy is the wiser? has been one of the leading issues in National politics during the greater part of our history.

Reciprocity.

The United States has entered into "reciprocity treaties" with various countries for securing the reduction of tariff rates. Each country agrees to admit certain products of the other country at reduced rates, or free of duty. These are commodities in the production of which there is little or no competition between the parties to the treaty.

The Payne-Aldrich tariff law, 1909.

The tariff law of 1909 provided for a tariff board of three members, who will investigate the facts as to production and prices, both here and abroad, upon which our tariff laws should be based. (Compare the Tariff Commission of 1883, American History, 467–468.)

This is a step in the direction of placing the work of tariff making upon a scientific basis, rather than leaving the determination of rates to influences that may be brought to bear upon members of Congress by particular industrial interests, which naturally wish rates favorable to themselves. This law also incorporated the maximum and minimum principle. That is, the rates fixed were minimum; but whenever the President shall determine that any other country has so adjusted its tariff rates that they unjustly discriminate against our products, then he may order an increase of twenty-five per cent. upon these rates, to apply to certain imports from that country. Free trade with the Philippine Islands was enacted, though the amounts of sugar and tobacco that can be imported free were limited. There was established a Customs Court, for the consideration of disputed questions of classification and rates, hitherto decided by customs officers and the regular courts.

The internal-revenue system.

Excises are taxes levied on the manufacture and sale of commodities. It is customary to speak of the proceeds of these taxes as "internal revenue." Liquors and tobacco are the most common objects of excise taxation.* Besides

* Taxes are levied not only upon the liquors themselves but upon the business of brewing and rectifying; of selling by wholesale and by retail; of manufacturing stills: and upon the stills themselves. A list of these taxes may be obtained from the collector of any internal-revenue district.

these, the National government taxes snuff, opium, oleomargarine, filled cheese, mixed flour, and playing cards.

The taxes of 1898.

Upon the outbreak of the Spanish-American War (1898), additional taxation became necessary. The liquor and tobacco taxes were increased and new taxes were levied upon bankers and brokers, billiard rooms, and legacies, and upon proprietary articles and legal documents.* Under this law, the internal-revenue receipts increased from $170,000,000 in 1898 to $273,000,000 in 1899. These taxes were repealed by Congress in 1901–2. An inheritance tax levied in connection with those just mentioned was also repealed later.

Collection of excise taxes.

The collection of excise taxes is supervised by the Commissioner of Internal Revenue, who is the head of a bureau in the Treasury Department. There are more than sixty revenue districts in the United States, with a collector at the chief official in each. This officer is responsible for the proper enforcement of the laws in his district; special agents are employed by the bureau to examine into suspected cases of fraud.† The greater number of these taxes are paid by the purchase of stamps which must be affixed, in the proper denominations, to the articles taxed. When a license fee is required for carrying on an occupation, the purchase and display of a certificate secures the enforcement of the law. Distilleries are under the supervision of government "store-keepers," who inspect and record each step in the manufacture of spirits. A gauger measures the contents of each package and affixes the stamps.

The first internal-revenue law, that of 1791, taxing the production of distilled spirits, was a part of Hamilton's financial policy. In western Pennsylvania it caused violent opposition, known as the Whiskey Rebellion.‡

Corporation tax.

In 1909 Congress enacted a law levying a tax of one per cent. upon the net income above $5,000 of all corporations, joint stock companies, and associations. This is known as the corporation tax law. The power of Congress to levy this tax was questioned, but the Supreme Court upheld its constitutionality.

* The documentary taxes are similar to those imposed by Parliament in the Stamp Act of 1765. They were also levied by our government during the Civil War. See American History, 145, 388–389.

† "Moonshiners" who run illicit stills are numerous in the remote mountainous districts of the Southern States.

‡ American History, 220, 231.

Direct and indirect taxes.

It is customary to classify taxes as *direct* and *indirect*. A duty, for instance, is considered an indirect tax, because the importer who pays it adds the amount to the price of the commodity upon which it is levied. The same is true of most articles upon which excise taxes are paid. The consumer pays the tax, in reality, but he pays it indirectly to the government.

How each kind must be levied.

Now, the rule prescribed in the Constitution for levying the kinds of taxes so far discussed is a part of the clause quoted above (p. 162): "but all duties, imposts, and excises shall be uniform throughout the United States." The justice of this rule is evident. The rates must not vary at the different ports of entry or in the various collection districts of the country. The Constitution does not use the term "indirect taxes," but it does speak of direct taxes, as follows:

Article 1, section 2, clause 3.

Representatives and direct taxes shall be apportioned among the several States . . . according to their respective numbers. . . .

Section 9, clause 4.

No capitation, or other direct, tax shall be laid unless in proportion to the census or enumeration hereinbefore directed to be taken.

Direct taxes.

Early in our history, the question arose, What is a direct tax? The Supreme Court decided this (1796) by naming only two kinds of taxes as direct, under the Constitution: *i. e.*, poll or capitation taxes (those assessed upon individuals) and taxes on land. Only these two taxes, then, were to be apportioned among the States, when levied. All others were to be uniform. This decision was followed for one hundred years.

In 1798 Congress levied a direct tax of two million dollars and apportioned it among the States in proportion to their population. The objects taxed were houses, land, and slaves, and the collection was made by Federal officers. Similar laws were enacted in 1815 and 1861.

It is not likely that another direct tax will be levied and apportioned among the States according to population. This is because differences in population among the States do not correspond to differences in wealth (*i. e.*, ability to pay the tax). The more populous States are also the more wealthy, but the *per capita* wealth is much greater there than in those States where population is less dense. Consequently, in the agricultural States of the South and West, the burden of taxation would be unjustly heavy.

Income taxes.

The position of income-tax laws levied by Congress is peculiar. Under the decision of 1796, just referred to, they were not included among the direct taxes. Consequently, when Congress levied such taxes during the Civil War, the rates were made uniform throughout the United States.*

Law of 1894 declared unconstitutional.

Following these precedents, Congress enacted, in 1894, an income-tax law providing that all incomes over $4,000 should pay a tax of 2 per cent. on the excess above that amount. The following year, contrary to all former decisions in which the meaning of the words "direct tax" had been determined, that term was declared by the Supreme Court to include such income taxes as were levied by the law of 1894. Consequently, since Congress had not determined the total amount to be collected and apportioned it among the States according to their population, this law was declared unconstitutional.

The income-tax amendment.

Agitation for an income-tax law has grown stronger in recent years, and as a result an amendment to the Constitution was adopted by Congress (1909) and submitted to the States for ratification. This is the first amendment that has been sub-

* In each of the several laws enacting these taxes, provision was made for the exemption from taxation of a small income, as $800 at first, and later, $600. For incomes above these figures, the rates were generally made progressive; for example, the law of 1862 taxed incomes above $600 and less than $5,000 at the rate of 5 per cent., those from $5,000 to $10,000, 7½ per cent., and those above $10,000, 10 per cent. These taxes were repealed after 1872. See American History, 387.

mitted to the States since the adoption of the Fifteenth Amendment. It reads as follows:

Article XVI. That Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

We have now reviewed the various forms of taxation employed by the National government to secure revenue. In the enactment of laws that impose taxes, Congress is governed by the Constitutional provision that

All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills. Article I, section 7, clause 1.

The framing of revenue bills is intrusted to the most important House committee, that on Ways and Means. Their bills are frequently known by the name of the chairman of the committee. In the Senate the Finance Committee considers and recommends amendments to bills for raising revenue. These important measures, as finally passed, are in most cases the result of compromises between the Senate and the House, arranged by conference committees. Revenue bills in Congress.

We have seen that the collection of National taxes is accomplished by an army of Federal officials whose jurisdiction extends into every corner of the country. We have seen that the objects of taxation are very numerous, so that every individual aids, directly or indirectly, in the support of the National government. The ease with which our immense revenue is raised seems marvellous to citizens of the Old World countries, where conditions of life are harder. Indeed, so great have been the ability and the willingness of the people to bear these burdens that the National government has more than once been embarrassed by an excess of revenue. Under these conditions it is not surprising that laxity in making expenditures has

been common and that great extravagance and wastefulness have frequently resulted.

National expenditures.

In Congress, appropriation bills, that is, bills providing for the expenditure of public money, may originate in either house; but the important general appropriation bills originate in the House of Representatives. These bills are really framed by the committees to which they are referred, and are based upon estimates furnished by the various executive departments. For this reason there is some adjustment possible between the financial needs of the government and the amount of taxes levied. But still, the independence of the legislative (or tax creating) and executive (or tax spending) departments of our government makes the fitting of revenue to expenditures a difficult matter, and in practice many errors are committed.

Unbusiness-like methods of appropriating money.

One of the greatest evils in connection with Congressional legislation is found in the immense number of bills providing appropriations for private and local purposes. Thousands of private pension bills passed annually, almost without consideration, represent claims which the Pension Bureau has rejected for good reasons. Appropriations amounting to many millions are made annually for the erection of public buildings and for river and harbor improvements that are entirely unnecessary and that benefit only the local community where the work takes place. This ill-spent public money is called "pork," and every Congressman is under constant pressure to obtain as much as possible for his district. Many persons judge of a Congressman's efficiency by his ability to obtain large appropriations, regardless of their necessity. This condition reveals a fundamentally wrong attitude toward the government. Congress should refuse to pass such items in appropriation bills, except upon the approval of boards composed of disinterested experts.

The public debt

When the ordinary revenues of a government are not sufficient to pay its expenses, recourse must be had to additional taxation, or to borrowing, or to both of these measures at once. The borrowing of money is not es-

sentially different from the levying of taxes, since it but postpones the time when, by taxation, the obligation must be met. This procedure is justifiable because the burden of National expense for certain purposes (as for defence) may well rest upon more than one generation of citizens. Accordingly, among its other financial powers, Congress possesses authority

To borrow money on the credit of the United States. Section 8 clause 2.

Money is borrowed, ordinarily, by the sale of bonds. These are the same nature as the promissory notes by which individuals obtain loans. National bonds state the promise of the United States to pay a certain amount, at a stated time, with interest. A "registered" bond contains the name of the owner, and this is a matter of record at the Treasury Department. When this bond is transferred, the record must be changed. "Coupon" bonds are usually payable to bearer; they have attached to them a number of coupons equal to the number of interest payments due during the term of the bond. National bonds.

United States bonds have been issued in various denominations, ranging from twenty dollars to fifty thousand dollars each. The term of a bond is not always a fixed number of years. Some of the Civil War bonds were payable at the option of the government after five but within twenty years from the date of issue. These were called "five-twenty's" (5/20's). The bonds issued in 1898, to obtain money for the Spanish War expenses, were "ten-twenty's." Kinds of bonds.

After being issued, National bonds are either held by individuals and corporations as investments, or they become the objects of trade and speculation, being bought and sold by bankers and brokers on the stock market. Their values fluctuate somewhat and are subject to daily quotation. If a bond sells for its face value it is at "par." Bonds quoted at 117 are at a "premium"; that is, they bring $117 for every $100 of their face value. Those quoted at 98 are at a "discount." When bonds fall due, the government "redeems" them at their face value. Or, they may be continued at a lower rate of interest. Redemption.

A large amount of five per cent. bonds that were due in 1881 were continued, by agreement, at three and one-half per cent., and some that fell due in 1891 were continued at two per cent. Provision is made by law for the purchase of bonds by the government before they are due. For this purpose, the Secretary of the Treasury is authorized to use a portion of the National revenues; this is called a "sinking fund." There is still another way in which the burden of our National debt has been decreased. Soon after the time when the 5/20 Civil War bonds became payable at the option of the government, the holders were given the privilege of choosing whether their bonds should be redeemed, or be exchanged for new ones, of the same amounts, at lower rates of interest. The latter alternative was accepted for many hundreds of millions of our bonds; so the burden of interest was reduced from six per cent. to five, four and one-half, and later to four per cent. This operation was called *refunding* the debt.*

Refunding operations.

Supplementary Questions and References

1. For the history of various tariff laws and their provisions, see American History as follows: Law of 1789, 215–216; 1816, 271–272; 1824, 289; 1828, 293; 1832, 307; 1833, 308; 1846, 328; 1857, 357; 1861, 387, 389; 1864, 400–401; 1872, 440–441; 1883, 467–468; 1890, 470; 1894, 493; 1897, 494.

2. The rates of the tariff law now in force are stated in newspaper almanacs. Is this tariff high, low, or moderate in its rates?

3. In the Statistical Abstract will be found the list of items upon which duties and internal-revenue taxes were collected, with the amount yielded by each, for a series of years.

4. How are internal-revenue stamps cancelled?

5. *a.* What is a deficiency bill? Harrison, This Country of Ours, 58.

   b. What are riders to appropriation bills? Harrison, 131–132.

6. Statistics answering the following questions may be found in the Annual Reports of the Secretary of the Treasury (Finance

* For accounts of the issuance and refunding of Civil War bonds, see American History, 386. 387, 388, 442–443.

Reports); Statistical Abstracts; Abridgments of the President's Message and Documents; Monthly Summaries of Commerce and Finance issued by the Bureau of Statistics, Treasury Department; newspaper almanacs and year-books.

(*a*) What were the revenues of the last fiscal year? The expenditures? The chief items under each head? Do you think that any of the expenditures were extravagant?

(*b*) Make a table representing revenues and expenditures for a series of years. How do you account for fluctuations?

(*c*) Estimate the per capita revenues and expenses for different years.

(*d*) What is the present bonded debt of the United States? (See also the Public Debt Statement issued monthly by the Treasury Department.) Make a chart showing the fluctuations of the public debt since the foundation of the government.

7. Find in daily papers quotations of the current prices of National bonds. How do you account for differences in their prices? How do the prices of these bonds indicate the Nation's credit? The actual rates of interest that bonds yield may be calculated by the use of "bond-value tables." A set of these tables, accompanied by an explanation, is found in Clow, Introduction to the Study of Commerce, Appendix IV.

8. For facts concerning the National "pork barrel," see World's Work, 20 : 13259-13276. For ex-President Roosevelt's opinion, see Outlook, 95 : 759–763.

9. The revenue cutter service. World's Work, 16 : 10591–10597.

10. The tariff act of 1909. Outlook, 92 : 872–876; Rev. of R's, 40 : 341–347.

11. What is a "tariff joker"? Outlook, 92 : 625–626.

12. The corporation tax law. Rev. of R's, 40 : 348–349; Forum, 43 : 256–262; Outlook, 92 : 587–588.

13. Should incomes be taxed? Forum, 41 : 513–520; Outlook, 85 : 503–508; 94 : 215–219.

14. Hide-and-seek with the customs. Cen. Mag., 45 : 466–473; Outlook, 88 : 823–829.

15. The government as a spender. Rev. of R's, 38 : 67–71.

CHAPTER XVIII

THE POWER OF CONGRESS OVER COMMERCE

In the conventions that assembled at Alexandria in 1785 and at Annapolis in 1786, commerce was the most important subject discussed. Indeed, it was the necessity for a better method of regulating commerce that brought about these meetings. This problem was one of the difficult questions before the Constitutional Convention, and its solution was reached only by compromise.* The clause embodied in the Constitution was a victory for the advocates of an efficient National government, for Congress was given power

Article I, section 8, clause 3.

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

In the exercise of this power, Congress was made subject to two limitations.

Section 9, clause 5.

No tax or duty shall be laid on articles exported from any State.

Section 9, clause 6.

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State be obliged to enter, clear, or pay duties in another.

Foreign commerce.

Acts of Congress regulating foreign commerce† may be grouped under several heads. (1) Congress has enacted measures for the protection of shipping, by the maintenance of light-houses, buoys, and life-saving stations.

* See American History, 197, 202.

† The exercise of this power was carried to its extreme limit in the embargo act of 1807 and the non-intercourse act of 1809. See American History, 253, 255.

(2) The navigation laws of the United States are also enacted under this provision of the Constitution. Regulations are prescribed under which vessels engaged in foreign commerce "enter" and "clear" ports.* Vessels that are "registered" in the United States are entitled to the protection of this government in any part of the world. No vessels are registered except those owned by citizens of the United States, and no foreign-built vessel can be registered.† The vessels of foreign countries may not engage in the coasting trade of this country. Tonnage duties are levied upon both foreign and American vessels. Navigation laws.

Since the Civil War there has been a great decline in the number of American built ships engaged in foreign commerce. (For statistics and reasons, see American History, 354, 442.) These now carry only about 15 per cent. of our imports and exports. A demand has arisen for the repeal of some of the navigation acts mentioned above. The granting of *ship subsidies* is also proposed, and bills for this purpose have often been before Congress. A ship subsidy law would provide for the payment of money from the treasury to persons who maintained lines of American built ships in foreign commerce. Ship subsidies.

(3) By virtue of its power over foreign commerce, Congress regulates immigration into the United States. Besides Chinese laborers, the following classes are excluded from the country: convicts, anarchists, insane persons, paupers and those liable to become paupers, polygamists, persons having contagious diseases, and laborers under contract or agreement to perform labor or service in the United States; there are excepted from the last class, persons engaged in the professions and skilled laborers Immigration laws.

* See these terms in the dictionary; also "entry" and "clearance." Notice that clause 6, quoted above, forbids the requirement of these processes in interstate commerce.

† Congress made an exception to this rule when in 1892 it entered to our registry two foreign-built vessels, on consideration that the company owning them build two vessels of the same class in this country.

employed in the establishment of new industries. An arrangement has been entered into between our government and that of Japan by which Japanese and Korean laborers are also refused admission to this country.

What is interstate commerce?

The second division of the power granted to Congress over commerce relates to that which is *interstate*. It must be remembered that the States still retain authority over the vast volume of business transacted entirely within their limits, which they regulate absolutely by their laws of trade and transportation. It is not easy to say, in every case, just where the limits of State and National authority lie. The United States Courts have decided that the State's power is complete over commerce that begins and ends within the State and does not materially affect the commerce that is interstate or foreign. If, however, a commodity that is an object of commerce starts in one State, destined for another, its control, throughout its course, lies within the power of Congress.

Commerce by water.

Interstate commerce includes that which is carried on by water, as well as land traffic. So the coast trade between the States lies within the jurisdiction of Congress; also commerce upon navigable rivers. "Wherever a river forms a highway upon which commerce is conducted with foreign nations or between States, it must fall within the control of Congress." By its "river and harbor bills," Congress appropriates large amounts annually for the improvement of navigable rivers. (See p. 170.)

Various interstate commerce acts.

The different "interstate commerce acts," beginning with that of 1887,* constitute a system of control established by the Federal government over persons and corporations engaged in interstate or foreign commerce; this includes the carrying of persons and property by either

* For the history of the evils in connection with transportation and the efforts of States to correct them, see American History, 455, 456; the law of 1887, *ibid.*, 466–467; the law of 1906, *ibid.*, 519.

rail or water. Pipe lines, telephone, telegraph, express, and sleeping-car companies are also brought under the same provisions. The administration of these laws is vested in an Interstate Commerce Commission consisting of seven members.

Their provisions.

The important provisions of these laws may be summarized as follows: (1) All charges must be "just and reasonable." The commission has power *to fix maximum rates* after investigation of a complaint by either party to a dispute over rates. (2) Pooling agreements are prohibited. (3) It is unlawful to make discriminations by giving to any particular person, corporation, or locality, an unreasonable advantage over others. This includes the granting of passes to others than railroad employees. The granting of rebates, which are intended to conceal discriminations, is forbidden. (4) The "long and short haul" clause makes it unlawful for a common carrier to charge more for the transportation of passengers, or the same kind of freight, over a shorter than a longer distance; provided, however, that the transportation is "under substantially similar circumstances and conditions," over the same line, and in the same direction. (5) All rates must be published and posted where they can be consulted by any person. (6) Railroad companies cannot engage in other lines of business. (7) Companies engaged in interstate commerce must have a uniform system of accounting. (8) They must make reports to the Interstate Commerce Commission regularly.

The Commission also receives complaints, hears testimony, and makes orders correcting abuses; or it may investigate conditions without previous complaint. It may suspend proposed increases of rates until their justice has been determined. Any person objecting to an order of the Commission may appeal to a new court known as the "Commerce Court," composed of five Circuit Court Justices.

Other laws affecting railways oblige them to adopt uniform systems of safety equipment; also, require full reports to the Interstate Commerce Commission of all accidents.

Other commerce laws.

Under its commerce power, Congress has enacted the food and drugs act, or "pure food law." This requires the makers of prepared foods and drugs shipped in interstate commerce to register their products, and prohibits the use of harmful preservatives and other components in them. The inspection of meats in packing plants by Federal officers is another means by which commerce is controlled. It has been proposed that the government should restrict child labor by prohibiting the shipment in interstate and foreign commerce of articles in the manufacture of which children below certain ages are employed.

The construction of the Panama Canal by the United States may be regarded as one of the most important ways in which Congress has undertaken to control commerce. This is similar to the policy of making river and harbor improvements, for which many millions of dollars are appropriated annually. The question of internal improvements by national authority was debated early in our history; one result was the construction of the National, or Cumberland, Road.* The same problem is now being considered in connection with projects for a system of "deep waterways," especially in the Mississippi Valley.

The trust question.

The concentration of industry within the last half century† has been accompanied by the growth of combinations known as *trusts*. The original object of such combinations was to secure economy in production, and to this extent they are beneficial; but when their control of an industry approaches monopoly, then the public may suffer from exorbitant rates and prices. So both the State and the National governments have attempted to

* See American History, 274, 277, 292.

† American History, 452–453. 472–473, 517–518.

keep alive competition in the industries where combinations exist. The anti-trust laws have been only partially successful.

The Federal Anti-trust Law.

Congress has authority over trusts only as they are engaged in interstate or foreign commerce. Hence the Anti-trust Law of 1890 makes illegal any combination in restraint of trade or commerce among the several States or with foreign nations. The enforcement of this law has given rise to many interesting cases.

Important decisions.

In connection with the Chicago strike of 1894,* the Supreme Court held that the Anti-trust Law forbade not only combinations of capital, but combinations of labor as well, if they were in restraint of interstate commerce. It has been decided that a trust engaged in the business of refining sugar did not fall within the scope of this law, since the manufacturing process in question did not constitute commerce. Again, an agreement among the railroad companies of the Trans-Missouri Freight Association to establish and maintain rates was considered a violation of the law of 1890, because this was a contract in restraint of interstate commerce (1897). Another decision, made in 1899, declared illegal a combination of iron pipe manufacturers who had made an agreement not to compete with each other; but their action was illegal only as to the sale of pipe in interstate business.

Another decision (1904) declared that it was illegal for two competing railroads (the Northern Pacific and Great Northern) to form a new corporation (the Northern Securities Company) for holding the shares of these companies, since the directors of the latter could so manage the business as to exclude competition. In 1911 the Standard Oil Company was declared by the Supreme Court to be an illegal combination, and its dissolution was ordered. The Bureau of Corporations in the Department of Commerce (see p. 256) has the special function of investigating the records of corporations engaged in interstate business, with a view to checking violations of the interstate commerce and anti-trust laws.

* See American History, 492–493.

Supplementary Questions and References

1. Should there be further restriction of immigration? Forum, 24 : 552–558; N. Am. Rev., 188 : 360–371; Outlook, 84 : 607–615; 83 : 33–36; Indept., 60 : 261–264; Rev. of R's, 33 : 336–339.

2. The immigration law of 1907. Rev. of R's, 35 : 469–471; N. Am. Rev., 185 : 587–593.

3. Descriptions of immigrants at Ellis Island. Outlook, 87 : 899–911; 913–923; Cen. Mag., 43 : 674–682; 45 : 466–473.

4. Arguments for and against Chinese exclusion. Forum, 33 : 53–58; 59–67; Japanese exclusion, N. Am. Rev., 184 : 29–34.

5. Should ship subsidies be granted? Outlook, 84 : 815–817; 85 : 307–311; 88 : 815–816; 94 : 108–109; 124–130; Arena, 33 : 634–636; Indept., 53 : 10–15; 130–132; 185–188.

6. The question of railway regulation. Indept., 60 : 835–838; 62 : 599–603; 699–704; Arena, 34 : 146–150; 35 : 132–139; 36 : 622–626; Outlook, 86 : 482–485.

7. The National control of trusts. Indept., 53 : 929–930; 1001–1004; 54 : 2927–2930; 58 : 303–306; 57 : 618–620; Outlook, 88 : 816–817; 93 : 761–763; Rev. of R's, 34 : 345–346.

8. The protection of life on railways. Rev. of R's, 35 : 456–468.

9. Improvement of waterways. Rev. of R's, 41 : 87–88; World's Work, 13 : 8576–8584; 15 : 10121–10127; Outlook, 94 : 17–20.

10. The National pure food law. N. Am. Rev., 184 : 848–852; Outlook, 88 : 260–264.

11. Should Congress control child labor? Outlook, 85 : 360–364.

12. Panama Canal and the government of the canal zone. World's Work, 16 : 10656–10657; Outlook, 91 : 906–909; 83 : 434–445.

CHAPTER XIX

MONEY OF THE UNITED STATES

I. Metal Money or Coin

Whenever men trade or exchange commodities they find some form of money very convenient, if not really necessary. A variety of things have served as money among peoples in different stages of civilization. Gold and silver have become the chief money metals of civilized countries on account of their high value, and certain other characteristics. The function of coining money has been assumed by governments because in this way only can uniformity in the size and composition of coins be secured. The government stamp becomes a guarantee of the value of a coin when otherwise each might have to be weighed and tested before it could be accepted. Congress has been vested with the power:

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures. Article I, section 8, clause 5.

To provide for the punishment of counterfeiting the securities and current coin of the United States. Clause 6.

The government coins money at its mints, which are located at Philadelphia (established in 1792), Denver, New Orleans, and San Francisco. Gold or silver ore must first be refined before it is sent to the mint as *bullion*. Here it is assayed to determine its purity. The pure metal is too soft for use as money, so an alloy of copper is added in the making of gold coins and silver dollars. In the "standard" metals thus produced the The mints.

alloy is one-tenth of the whole; that is, the metal is nine-tenths (or .900) "fine."

Process of coining.

In the process of minting, the standard metal is first rolled into strips of the thickness of the coin. From these strips round pieces are cut by heavy machinery. The weight of each piece is tested and when found accurate it goes to another machine, from which it comes with the edge slightly raised on both sides. This device decreases the wear on the faces of the coin. In the next operation, the disk of gold or silver is subjected to immense pressure between two engraved dies; in this way the proper inscriptions are stamped upon its faces. At the same time the edge of the coin is milled.

Below is a list of the coins now made at the mints of the United States.

Coins of the United States.

Gold.	Silver.
Double eagle	One dollar
Eagle	Half dollar
Half eagle	Quarter dollar
Quarter eagle	Dime

Minor coins, the nickel and one cent piece.

The ratio.

The "standard" coins of each kind are of course the gold dollar and the silver dollar. The weight of the pure metal in the gold dollar is fixed by law at 23.22 grains (Troy weight). In a silver dollar, the pure metal weighs 371.25 grains, or 15.988+ times as much as in the gold dollar. Hence we say that the ratio of our standard coins is 15.988+ to 1, or approximately 16 : 1. This is called the *mint ratio.* Since our coins are .9 fine, the total weights are 25.8 grains for the gold dollar and 412.5 for the silver dollar.

Free coinage.

A government may pursue one of two distinct policies toward the coinage of a certain metal. (1) It may agree

to coin all the bullion of that metal that may be brought to the mints by individuals; this is *free* * *coinage*. (2) The government may limit the amount of bullion that will be coined; this may be called *limited coinage*. Under free coinage of any metal the government makes no effort to control the amount of bullion which will be coined; it coins "on private account" all the bullion brought to its mint. Under limited coinage a certain amount of the bullion is coined "on government account."

Bimetallism.

Since the first coinage act of our government (1792) there has been free coinage of gold. There was also free coinage of silver until 1873. Because during this time there was free coinage of both metals, and both gold and silver dollars were full legal tender, we had nominally, at least, *bimetallism* or a *double standard*. The law of 1873, by stopping the coinage of silver dollars, brought about the single gold standard. After 1878 there was limited silver coinage until the purchase of silver bullion was discontinued in 1893.

The demand for the free coinage of silver that arose after 1873 † and lasted until about 1900, resulted in two important laws—the Bland-Allison act (1878) and the Sherman act (1890). Both authorized the coinage of silver dollars, but limited the amount to be coined. In 1893, on account of the panic of that year, Congress stopped the purchase of silver bullion by the Treasury Department for the coinage of silver dollars; and none has since then been purchased, except for the coinage of sub-

* The word *free* means *unlimited*. The definition of free coinage given above states its meaning as the phrase is commonly used. The following is a more accurate definition: Free coinage contemplates the coining of all the bullion brought to the mints, either gratuitously or with a deduction not to exceed the actual expenses of coinage.

† The causes at work in this connection, the various laws passed, and the political campaigns in which the silver question was prominent are discussed in American History, 457–459, 479, and 485.

sidiary coins and Philippine money. A law of 1900 definitely established the single gold standard.

Subsidiary silver.

The silver coins of denominations less than one dollar are called subsidiary coins. The silver half-dollar weighs only 192 grains and is therefore lighter proportionately than the silver dollar. The quarter and ten cent pieces are correspondingly reduced in weight. They are legal tender only in sums of ten dollars or less.

Minor coins.

The five cent piece (nickel) weighs 77.16 grains and is composed of 75 per cent. copper and 25 per cent. nickel. The one cent piece weighs 48 grains and is composed of 95 per cent. copper and 5 per cent. tin and zinc. These minor coins are legal tender in amounts of twenty-five cents or less.

II. Paper Money

United States notes.

There are at present five kinds of paper money in circulation. They are United States notes, silver certificates, gold certificates, Treasury notes of 1890, and National bank notes. The United States notes were created in the early years of the Civil War as a means of paying the enormous expenses of the government.* Taxation is the ordinary method of providing funds for government expenses; but it is difficult to create a new system of taxation and some time is required to put it into operation. In the year 1862 the expenses of the government greatly exceeded its revenue. Great sums of money were being borrowed by the sale of bonds, but the bonds had depreciated in value. It was therefore determined that the government should print certain designs on pieces of paper, call these money, and compel people to accept them in payment of debts by declaring them legal tender; that is, all persons must accept them in payment of debts. These were the United States notes, sometimes called "legal tenders." A total of $450,000,000 was authorized by Con-

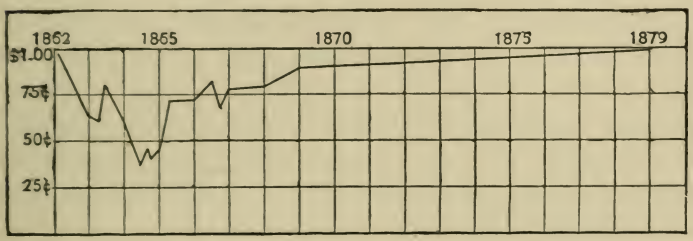
* The history of these notes is stated fully in American History, 388, 443–444, 457.

gress. With this money the government paid the salaries of its officers and soldiers and purchased supplies that were necessary for carrying on the Civil War.

Depreciation.

When a government refuses to pay its obligations in coin and pays instead only paper money containing promises to pay coin or specie, at some future time, it "suspends specie payments." If the paper money is issued in excessive amounts, it will depreciate in value, that is, a certain amount of it will be worth less than the same amount of coin. This is what happened when the United States notes were issued. The history of their depreciation until at one time they were worth only forty cents on a dollar is told by the accompanying chart:

VALUE IN GOLD OF ONE DOLLAR IN U. S. NOTES



Resumption of specie payments.

After much discussion Congress finally decided, by an act passed in January, 1875, that it would resume specie payments on the first day of 1879 by redeeming in gold all of the United States notes that might be presented for redemption. When this time arrived the amount had been reduced to $346,681,016, and Congress had forbidden any further reduction. This is the amount at present outstanding. The resumption of specie payments necessitated the presence of gold in the Treasury with which to redeem the notes. Accordingly, the law of 1875 authorized the Secretary of the Treasury to obtain gold by selling bonds. Just before January 1, 1879, the notes once more passed at face value, and but few were presented for redemption. The amount outstanding was not decreased, for instead of cancelling those that were redeemed the

Secretary was obliged by law to *re-issue* them in making payments from the Treasury. This caused trouble in later years.

Constitutionality of legal tenders.

There can be little doubt that the framers of the Constitution never intended that Congress should have the right to declare anything but gold and silver legal tender. The Constitutionality of the laws that authorized the "legal tenders" was therefore one of the most important questions ever submitted to the Supreme Court. The final decision * was in favor of the right of Congress to exercise this power. The Constitutional basis of this right is implied by some from the power to levy and carry on war; by others from the power to borrow money; by still others from the power to coin money. The court rested its decision finally upon the ground that this power is "one of the powers, belonging to sovereignty in other civilized nations," and that as it is not expressly withheld by the Constitution, it is by necessary implication vested in Congress in connection with the powers over the currency expressly granted.†

Silver certificates.

Let us now notice two kinds of our paper money that are quite similar. When Congress, by the Bland act of 1878, authorized the coinage of silver dollars, it provided also for the silver certificates. Silver dollars are bulky and inconvenient to handle. Any holder of them may deposit them in the United States Treasury and receive in exchange silver certificates. The silver dollars remain in the Treasury.

Gold certificates.

Gold certificates are issued upon the same plan. These two kinds of paper money are therefore merely certificates of deposit. To redeem them the division of redemption of the Treasury Department holds specie in amounts exactly corresponding to the certificates outstanding.

* Rendered in 1884. Julliard *vs.* Greenman. 110 U. S., 421.

† Cooley, Principles of Constitutional Law, 83.

Treasury notes of 1890.

The Treasury notes of 1890 were issued in accordance with the Sherman act. (See p. 183.) They were given in payment for silver bullion; this was not coined at the time, but remained in the Treasury. Few of these notes are now outstanding.

National bank system.

Four kinds of paper money have been described; there remains the fifth kind, National bank notes. National banks are under the control of a bureau in the Treasury Department, having for its head the Comptroller of the Currency. A National bank is organized in much the same way as other corporations, by any number of persons, not less than five.

Upon the basis of its capital stock the bank performs the ordinary banking functions; that is, it makes loans, discounts notes, buys and sells exchange. In addition to these functions National banks have another not at present exercised by other banks—they issue National bank notes for circulation as money of the United States. The entire business of these banks is conducted under regulations of the National law, and they are subject to inspection by National officers.

Deposit of bonds.

When a National bank is organized it must invest a sum of money equal to at least one-fourth of its capital in United States bonds. These may be purchased at any time from a broker. The bank must deposit them in the Treasury of the United States; but they are still the property of the bank and it receives the interest from them. The bank will then receive from the Comptroller of the Currency, National bank notes equal in amount to the par value of the bonds deposited. The president and the cashier of the bank sign each note, and they may then be loaned or paid out for any purpose in the ordinary course of business.

A note of this kind reads: "The —— National Bank of —— will pay the bearer —— Dollars on demand." How

Why the notes are secure.

can we be certain that this promise will be kept? The bonds deposited at Washington constitute the security for these notes. A National bank may fail; that is, its depositors may never receive back their money; but the holders of National bank notes will lose nothing so long as United States bonds are good security. For if the bank cannot redeem its notes in lawful money according to its promise, the Comptroller of the Currency will sell the bank's bonds and thus obtain money with which to redeem them. This is the reason why we never hesitate to receive one of these notes even though the responsible officials of the bank may be entirely unknown to us.

Emergency currency.

Our monetary system is rightly criticised as inelastic; that is, the amount of money in circulation does not increase and decrease readily in response to the demand for money in business at different times. As a remedy for this defect, national banks may organize in groups and these associated banks may then issue additional notes under the supervision of the Comptroller of the Currency. The security for this "emergency currency," which is limited in amount, may be approved bonds and commercial paper.

A central bank.

It has been proposed to establish a great "central bank" which would have as one of its functions the issuance of government paper money, regulating the supply in accordance with the demands of business. Twice in our history have such banks been in existence; from 1791 to 1811 and from 1816 to 1836; they are found in European countries to-day.

Standard of weights and measures.

The clause by virtue of which Congress possesses power "to coin money" also gives it authority "to fix the standard of weights and measures." It was only during the last session of the 56th Congress, in 1901, that a law was enacted giving full effect to this grant of power. The only standard previously adopted by law was the English Troy pound; all other measurements of weight, distance,

and capacity were based upon standards fixed by European governments. Standard thermometers and measures based on the metric system came from France, while standards of electrical measurement were German. Millions of dollars were spent annually by manufacturers, scientists, and others in obtaining standardized instruments from abroad. A law of 1901 established a National Standardizing Bureau in the Treasury Department, and appropriated money for a laboratory at which the standards used in all the applied sciences will be kept.* A director, a physicist, a chemist, and their assistants will exercise the functions of the Bureau for the National, State, and municipal governments, for educational institutions, and for individuals engaged in pursuits requiring the use of standardized instruments.

Supplementary Questions and References

1. The national banking system is discussed in American History, 399–400; the Bank of the United States, 220–221, 272, 309–311.

2. What things have been used as money besides metals? What qualities of gold and silver have made them the common money metals? Ely, Outlines of Economics, 142–143; Laughlin, Elements of Political Economy, 69–72; Walker, Political Economy, 102–104; Encyclopedia articles on money and coinage.

3. Weigh a five dollar gold piece on a druggist's scales; weigh five silver dollars. What is the ratio of these weights?

4. Put a silver dollar in one side of a balance, and one dollar in subsidiary silver coins in the other. What is the result? Why? See an account of the monetary laws of 1853. (References in question 7.)

5. Balance an old coin against a new one of the same denomination. Is the former worth less than the latter? Coins become abraded and yet pass at face value except in international

* This bureau, in 1903, was transferred to the Department of Commerce and Labor.

trade. Coins shipped abroad are weighed to ascertain their true value.

6. On November 1, 1910, the total amount of money in circulation in the United States was $3,180,084,499. The population was estimated at 90,844,000. Calculate the per capita circulation. How do these amounts compare with the *per capita* in other countries? See newspaper almanacs.

7. The following books contain accounts of our monetary history: Knox, United States Notes; White, Money and Banking; Noyes, Thirty Years of American Finance; Taussig, The Silver Situation in the United States; Andrews, An Honest Dollar; Bullock, Introduction to the Study of Economics; Laughlin, Political Economy; Report of the Secretary of the Treasury, in Abridgment of President's Message and Documents, 1895–96, 187–246. (A valuable account, containing several official reports.)

8. Statistics of coinage, value of silver, production of precious metals, etc., may be found in the Statistical Abstract; Finance Reports; Treasury Department Circulars, No. 123 and No. 143; Reports of the Secretary of the Treasury in Abridgment of the President's Message and Documents.

9. What a central bank would do. World's Work, 19 : 12394–12397.

CHAPTER XX

OTHER GENERAL POWERS OF CONGRESS

I. Power of Naturalization

Naturalization is the process by which a foreigner becomes a citizen. The first section of the XIVth Amendment declares the following classes to be citizens: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside." This section was inserted in order to make certain the citizenship of the freedmen, so that their rights would be under protection of the National government.* The section has been interpreted to apply to "white persons and persons of African descent." An Act of Congress in 1882 expressly prohibits the naturalization of Chinamen. Naturalization has also been denied to natives of Japan and of Burmah. But the Supreme Court has decided that a child born in the United States of Chinese parents is a citizen.† Who are citizens?

Previous to the adoption of the Constitution, the individual States had the right to determine their own rules of naturalization. Much confusion thus arose because of the different requirements in the various States, and with little discussion the Constitutional Convention declared that:

Congress shall have the power to establish a uniform rule of naturalization and uniform laws on the subject of bankruptcies throughout the United States. Section 8, clause 4.

* See American History, 421; 423.

† United States vs. Wong Kim Ark. 169 U. S., 649.

How an alien becomes a citizen.

The number of years of residence in the United States required before an alien might be admitted to citizenship varied until 1802 when the present rule of five years was adopted. An alien who has reached the age of eighteen years must, at least two years before admission to citizenship, appear before one of several State or United States courts designated in the law. He must declare upon oath that it is his *bona fide* intention to become a citizen of the United States and to renounce forever all allegiance to any government formerly having jurisdiction over him. If he has borne any title of nobility he must renounce it. This declaration is then recorded and the clerk furnishes the applicant with a certified copy which is sometimes called his "first papers."

Declaration of intention.

Certificate of naturalization.

Not less than two years nor more than seven years after this declaration, provided he has resided continuously within the United States at least five years and within the State or territory where the court is held at least one year, he must file in his own handwriting his petition for citizenship in which he declares that he is not opposed to organized government, is not a believer in the practice of polygamy, and intends to become a citizen of and reside permanently within the United States. Two witnesses who are citizens of the United States must testify to his term of residence and declare that during the time he has behaved as a person of good moral character, and is qualified to become a citizen. Ninety days from the filing of the petition the applicant is required to appear in open court and declare upon oath that he will support the Constitution of the United States and renounce and abjure all allegiance and fidelity to every foreign prince, State, or sovereignty whatsoever. The applicant must be able to speak the English language. The facts having been ascertained to the satisfaction of the court, a certificate of naturalization is granted. His wife and any of his chil-

dren under twenty-one years of age become citizens at the same time.

Status of minors.

The children of naturalized citizens born abroad are regarded as citizens. Children of foreigners born in this country and residing here may elect their allegiance. An alien coming to the United States before he is eighteen years old may be admitted to full citizenship, upon the declaration of his intention, after he has resided in the United States five years and is twenty-one years of age. He must be able to prove a good moral character by two witnesses and satisfy the court that, for the two years next preceding, it has been his *bona fide* intention to become a citizen.

Bankruptcy law of 1898.

The United States District Courts have jurisdiction over bankruptcy cases according to the law of July 1, 1898. It provides also that any person who owes debts, except a corporation, may on his own motion, before such a Court, become a "voluntary" bankrupt. Any person or company, except a National bank or a bank organized under State or Territorial laws, owing debts of $1,000 and over may be forced by creditors into "involuntary" bankruptcy after an impartial trial. It was estimated that within a period of less than three years after the passage of this law some 40,000 persons became voluntary bankrupts, and debts of over $600,000,000 were thus cancelled.

II. The Postal System of the United States

Section 8, clause 7.

Congress shall have the power to establish post-offices and post-roads.

Development of the postal system.

No part of our government better indicates the great rapidity of our National development than the progress of the post-office system. An act of Congress of 1782 directed that a mail should be carried at least once in each week from one office to another. In 1790 there were seventy-five post-offices in the United States; postage to the amount of $37,925 was collected, and the post-roads extended over 1,875 miles. Said Postmaster-General Smith in 1899: "The postal establishment of the United

States is the greatest business concern in the world. It handles more pieces, employs more men, spends more money, brings more revenue, uses more agencies, reaches more homes, involves more details, and touches more interests than any other human organization, public or private, governmental or corporate." In 1910 there were 59,580 post-offices with employees numbering over 200,000. The expenditures amounted to $229,977,000, and the total extent of mail routes was some 512,000 miles, and the number of pieces of mail matter handled was 14,000,000,000.

Classes of mail matter and rates.

There are four classes of domestic mail matter, as follows: First-class—letters, postal-cards, or other wholly or partly written matter and all matter closed against inspection. The rates of postage (postal-cards and "drop" letters mailed at non-delivery offices, excepted) are two cents per ounce or fraction thereof. There is also a two-cent rate to Great Britain and Germany. Second-class—newspapers and publications issued at stated intervals as often as four times a year, bearing a date of issue and numbered consecutively. When sent by the publishers or news-agents the rate is one cent a pound. For other persons the rate is one cent for four ounces. Third-class—books, proof-sheets accompanied by manuscript copy, and seeds may be sent at the rate of one cent for two ounces. Fourth-class—all merchandise not included in the other classes and limited to four-pound packages. The rate is one cent an ounce. All mail matter may be registered by the payment of eight cents in addition to the regular postage. A "special delivery" ten cent stamp in addition to the regular postage entitles any mailable matter to immediate delivery by special messenger, upon arrival at the post-office to which it is addressed.

Postal savings-banks.

For some years, there was an agitation in favor of establishing savings-banks, similar to those in European countries, in post-offices. It was urged that this would encourage thrift among small depositors, who were not within easy reach of private savings-banks. A law was passed in 1910 which provided for the establishment of

postal savings-banks. The plan has proven a success. The post-office acts as the agent through which the funds are deposited in the National banks. The banks pay the government 2¼ per cent. interest of which the depositor receives 2 per cent.

The postal deficit.

The United States is the only great nation whose post-office system does not pay a profit. The deficit has been several millions of dollars annually, that for 1910 being $6,000,000. This was caused largely by the transportation of second-class matter. Newspapers are carried free within the county of publication except in cities having free delivery. There is a charge of one cent a pound on periodicals entered as second-class matter, whereas the cost to the government for transportation is eight cents a pound. It has been contended by the publishers of periodicals in their opposition to an increase of the rates on this class of mail (1) that the advertisements in magazines increase the amount of first-class mail matter through the correspondence which they bring about; (2) that the government pays excessive sums to the railroad companies, thus increasing the deficit; and (3) that the post-office carries all government business free. But in 1911, for the first time since 1883, there was a postal surplus of nearly $220,000 which was due chiefly to the improvement in administration.

Free delivery.

One of the notable advances in the mail service was the provision for the free distribution of mail in cities of 10,000 inhabitants, or where the annual postal receipts are $10,000 and above.

Rural mail delivery.

A greater innovation was made possible by an act of Congress in 1897, which made an appropriation for testing the advantages of the free delivery system in the country districts. In many different sections of the country routes were established along which there is the daily collection and delivery of the mail from house to house. The plan has met with much favor. By November 30, 1909, 39,516 such routes had been established. The rural population receiving daily mail service amounted

to more than 18,000,000. In the districts where such routes have been formed there has been a large increase of postal receipts over the revenues received from the old system of rural post-offices.* In addition to bringing the country districts into more immediate connection with the centres of population, the establishment of these routes will bring about a more improved system of road making. Indeed it has practically been determined that good roads shall be made a prerequisite, and on one route the farmers expended $3,000 in the improvement of the roads before the route was granted.

A parcels post.

The Postmaster-General in 1908 asked permission to establish a limited parcels-post which should be confined to the rural delivery routes. It was urged that it would not alone be of great benefit to the farmers, but would bring large additional revenues to the post-office. The arguments against the system have been presented by the express companies and other common carriers on the ground that it would mean the destruction of much of their business. It was claimed also by merchants of small towns that the department stores of the cities would thus be able to undersell them. Although the plan was favored by the President, 1910, it failed in Congress.

Post-roads.

Post-roads, or routes, are declared by statute to be "all letter carrier routes in towns and cities, all railroads and canals, and all the waters of the United States during the time the mail is carried thereon."

III. Copyrights and Patents.

The clause which provides that the rights of authors and inventors shall be protected by suitable Congressional enactment was adopted without debate in the Constitutional Convention. Congress was given power:

* During the year 1907–1908, 3,694 of these post-offices were discontinued.

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

Section 8, clause 8.

Any person desiring a copyright must deliver at the office of the Librarian of Congress, or deposit in the mail addressed to him, on or before the day of publication, a printed copy of the title of the book, map, chart, dramatic or musical composition, engraving, cut, print, photograph, or chromo, or a description of the painting, drawing, statue, statuary, or a model or design for a work of the fine arts for which he desires a copyright. Two complete printed copies of the best edition of the book, map, etc., or a photograph of the painting, statue, etc., copyrighted must be delivered or sent to the Librarian of Congress not later than the day of publication. These copies must be printed from "type set within the limits of the United States or from plates made therefrom, or from negatives, or drawings on stone made within the limits of the United States, or from transfers made therefrom."

Process of obtaining a copyright. Law of July, 1900.

After complying with the law the author, inventor, designer, or proprietor of the book, chart, engraving, etc., may have the sole liberty of printing, copying, and selling it for a period of twenty-eight years. A renewal for a second term of fourteen years may be secured by complying with all the regulations for obtaining the original copyright. Copyrights may be sold or transferred providing the record is made in the office of the Librarian of Congress within sixty days.

Protection by the copyright.

As early as 1819 the authors of England and the United States tried to induce Parliament and Congress to pass an international copyright law. The writings of an author of one of these countries were commonly republished in the other country without his consent. All attempts to secure such legislation were fruitless until Congress enacted, March 3, 1891, that our copyright law should also apply to a citizen of a foreign nation, providing citizens of the United States are given equal copyright privileges

International copyright.

with the citizens of that nation, or in case such nation is a party to an international agreement, into which the United States may enter, which provides for "reciprocity in the granting of copyright." Copyright relations have been established by the United States with the following nations: Belgium, France, Great Britain and her possessions, Switzerland, Germany, Italy, Denmark, Portugal, Spain, Mexico, Chile, Costa Rica, and Holland.

Patents.

The inventive genius of the American people, together with the protection afforded inventors by our laws, account for the fact that out of 1,729,147 patents, the total number granted in all countries up to the year 1897, over one-third had been issued in the United States.* In the year 1910, 37,421 patents were granted by our government. A person desiring a patent must declare upon oath in his petition addressed to the Commissioner of Patents that he believes himself to be the first inventor of the article for which he solicits a patent. He must also submit a full description of the invention together with drawings, and if required by the Commissioner, a model of it. The sum of $15 is charged for filing the application and $20 for issuing the patent. The patent is issued for seventeen years, but may be extended for seven years longer by the Commissioner or by a special act of Congress, providing the inventor has not received what is regarded as an adequate money return. During this period, the patentee has the exclusive right to manufacture and sell his invention. He may also transfer the right to another if notice is sent to the Patent Office.

Caveat.

A caveat filed in the Patent Office gives a description of a proposed invention and secures to the inventor an extension of one year in which to complete his work.

The Patent Office is one of the self-supporting parts of the government. With the fees there has been constructed the building now occupied by the Department of the Interior, and a large surplus has been accumulated besides.

* Report of the Commissioner of Patents, 1897, p. vii.

IV. Piracies and Felonies

Congress shall have power to define and punish piracies and felonies committed on the high seas and offences against the law of nations. Section 8, clause 10.

The jurisdiction of a State is limited by the low-water mark. The United States has jurisdiction over the waters beyond the low-water mark and extending three miles farther into the ocean, and including gulfs and bays; also over crimes committed on vessels of this nation upon the high seas, that is, the waters of the ocean beyond this limit. Crimes on the high seas.

"Piracy is robbery on the sea, or by descent from the sea upon the coast, committed by persons not holding a commission from, or at the time pertaining to, any established state." The established punishment for piracy is death. Each nation has the power to extend the definition of piracy, as, for illustration, in 1820 Congress declared the slave trade to be piracy. Such a law, however, can be made to apply only to citizens and vessels belonging to that nation. Piracy. Woolsey, International Law, § 137.

Felonies are usually interpreted as including such extreme offences as treason, murder, arson, and other crimes, punishable by death or imprisonment in State prison. Felony.

The law of nations or international law is defined as follows: "The rules which determine the conduct of the general body of civilized States in their dealing with one another."* Law of nations.

V. Military Powers of Congress

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water; Section 8, clauses 11, 12, 13, 14.

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years.

To provide and maintain a navy.

To make rules for the government and regulation of the land and naval forces.

* Lawrence, The Principles of International Law, p. 1.

Declaration of war.

The power to declare war in European nations largely rests with the Executive. Such a plan was proposed in the Constitutional Convention but it was thought a sovereign power of this nature ought to be exercised in a Republic by the representatives of the people. A formal declaration of war is not absolutely necessary before hostilities are begun, but it is usual.

Privateers.

Great harm has been done to commerce through the use of privateers in time of war. These are vessels which are owned and officered by private persons but are commissioned through the granting by a government of letters of "marque and reprisal." * With such a commission, a vessel is privileged to seize the property of the enemy wherever found. In the Congress of Paris, of 1856, in which the chief European powers, Spain excepted, were represented, one of the principles agreed to was that privateering should be abolished. Although our government was not a party to the agreement, the President declared at the opening of the Spanish-American War, 1898, that its provisions should be maintained. Spain declared in favor of granting letters of marque to privateers but did not carry out the threat.

Captures.

Captures on land become the property of the government. Prizes, or captures on the water, are sold under the authority of the United States District Court. The proceeds are divided among the victorious crew in proportion to the service-pay of each, if the captured vessel is of equal rank with the captor; if of inferior rank one-half is paid to the government.

The army.

There was great jealousy and fear of the power of the army at the close of the Revolutionary War. In order that the standing army might not become unduly large, the Constitution provides that the appropriation for that purpose shall not be for a longer term than two years. It was believed that a check could then be imposed through the election of new Representatives. These appropriations have ordinarily been made annually. Compared

* The term was at first applied on land. An officer thus commissioned might pass the *mark*, or boundary, and make reprisals on the persons or property of the enemy.

with the standing armies of European nations, our army is insignificant in numbers.* The army of France on a peace footing now numbers 600,000 men; of Germany 617,000; of Great Britain 132,000; and of Russia 1,200,000.

Officers of the army.

The President is *ex-officio* commander-in-chief of the army and navy of the United States, but the actual movements of the army are practically directed by the lieutenant-general, the officer now highest in command. The commissioned officers of a company are captain, first and second lieutenants, with an additional first lieutenant for the artillery. The non-commissioned officers are first sergeant, sergeant, and corporal. Officers above the rank of colonel are called "officers of the line" and all others "field officers."

The navy.

The construction of a navy in the modern sense was not begun by our government prior to 1883. Since that time there has been a notable advance and in 1910 it was estimated that our navy was excelled in strength only by that of Great Britain. Congress, in 1910, in spite of the opposition of the advocates of peace, continued the policy of "adequate preparation" by authorizing the construction of two battle-ships a year. The Secretary of the Navy declared that the purchase of eight additional battle-ships at an outlay of $50,000,000 would have prevented the war with Spain, which necessitated an immediate outlay of more than ten times that amount and an average annual expenditure besides of $2,000,000 for pensions.

Classes and names of vessels.

Number of men and officers in the navy.

A ship of the first class is given the name of a State, one of the second class that of a principal city or river, and the name for one of the third class is selected by the President. The navy now contains over 150 ships. At the beginning of the year 1910, the number of men on board the war-vessels aggregated 46,000. The titles admiral and vice-admiral, corresponding to the grades

* The "New Army Law" of January, 1901, established the minimum of men in the army at 57,000 and the maximum at 100,000. In 1908 the number of officers and men in the army was 72,628.

of general and lieutenant-general in the army, were created by act of Congress to be bestowed as a recognition for very distinguished service during the Civil War on the following men: Admirals Farragut and Porter, and Vice-Admirals Farragut, Porter, and Rowan. Admiral Dewey was likewise granted his title by a special act of Congress after the battle of Manila. Grades in the line of the navy ranking with the army officers, major-generals, brigadier-generals, colonels, and so on, are rear-admirals, captains, commanders, lieutenant-commanders, lieutenants, masters, ensigns.

Naval militia.

The naval militia has been organized in eighteen States. They are under the immediate direction of the governors and adjutant-generals. When called into service during time of war they man the vessels for the defence of the harbors, thus freeing the regular force to engage in active warfare.

The militia.

A nation must depend for protection either upon a large standing army or upon citizen-soldiers. Since the regular army was to be small, the plan to provide for the militia met with but little opposition in the Constitutional Convention. Congress was accordingly given the power:

Section 8, clause 15.

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions.

Clause 16.

To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

Who are the militia?

As defined by Congress the militia consists of all able-bodied male citizens of the United States and those who have declared their intention to become citizens between the ages of eighteen and forty-five years.

The National Guard.

That portion of the militia regularly organized into regiments in the various States under officers of their own selection is called the National Guard. They are granted military stores by

order of the Secretary of War and are called upon to take part in the manœuvres and field practice of the regular army. In case of need they may be called into the field as a second line of national defence. The number of men in the National Guard is over 100,000.

Volunteers of 1898.

When war with Spain was determined upon, the volunteer army bill was passed by Congress and the President issued a proclamation, April 23, calling for 125,000 volunteers for two years' service. May 25, there was a second call for 75,000. These were apportioned among the States and Territories according to their population. The militia could not be called out, for the conditions mentioned in clause 15 did not apply, and it was necessary to resort to the volunteer service. Preference was given to those volunteers who were members of the organized militia.

VI. Location of the Capital

The Congress of the Confederacy, in 1783, while in session at Philadelphia, made a fruitless appeal to the authorities of Pennsylvania for protection against the menaces of a portion of the unpaid Revolutionary army, and was compelled to leave the city. The agitation arising over this incident doubtless led to the Constitutional provision:

Section 8, clause 17.

Congress shall have the power to exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.

District of Columbia.

After a notable contest, Congress in 1790 accepted the cession of ten miles square of land in which to locate the National capital, offered by the States of Maryland and Virginia and situated on the Potomac River. Some

thirty square miles were afterwards receded to Virginia. New York had been the capital since 1785. In 1790 it was again located at Philadelphia for ten years, and was then transferred to the District of Columbia.

Government of the District.

The local affairs of the District are administered by three commissioners: a Republican, a Democrat, and an officer of the Engineer Corps of the army. They are appointed by the President and confirmed by the Senate for a term of three years, and each has a salary of $5,000 per annum. They are granted the privilege of originating many bills relative to the affairs of the District, which then pass through the ordinary course of legislation in Congress. All other officers are appointed by the President, the inhabitants not having the right of the ballot in a single instance. One-half the expenses of the government is provided for through Congressional appropriations. The remainder is met by taxation in the District.

Forts and arsenals.

When the States sell land to the general government to be used for forts, magazines, and other purposes, they usually reserve the right to serve civil and criminal writs on persons within the ceded territory. Such places cannot, in consequence, become asylums for fugitives from justice.

VII. Implied Powers

We are now to consider one of the most important grants of power to Congress:

Section 8, clause 18.

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the government of the United States or in any department or officer thereof.

Our national development has been largely dependent upon the liberal construction given this clause, which is often called the "elastic clause" of the Constitution.

Strict and loose construction.

The question of its real interpretation arose over the problem of establishing the first United States Bank in 1791. Madison urged, when the measure was being considered in the House of Representatives, that Congress

CORRECTIONS AND ADDITIONS

MADE NECESSARY

BY RECENT LEGISLATION

P. 123: Vermont and Maine are now the only States which do not hold their state elections in November.

P. 128: Arizona is now a State, so that Alaska, Hawaii, Porto Rico, and the Philippine Islands are the Territories that send delegates to the House of Representatives.

P. 129:

Amendment XVII. Election of Senators.

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

When vacancies happen in the representation of any State in the Senate the executive authority of such State shall issue writs of election to fill such vacancies. Provided, that the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

This amendment, which became a part of the Constitution April 8, 1913, by ratification of the legislatures of thirty-six States, the three-fourths required, modified Clause 1 and a portion of Clause 2, of Section 3, Article I of the Constitution. Clause 1 provided that Senators should be chosen by the State legislatures. Clause 2 provided that vacancies were to be filled by the State legislatures.

For many years the demand for the *direct election* of United States Senators had behind it an overwhelming public sentiment. There was no argument for the direct election of a Governor which did not apply with equal force to the election

of Senator. The House of Representatives passed the resolution a number of times providing for an amendment to the Constitution which would secure the election of Senators by popular vote. More than two-thirds of the State legislatures had gone on record in favor of such a reform. But not until 1911 was this proposal to amend the Constitution reported to the Senate by a committee for favorable action. The resolution failed to secure the requisite two-thirds vote at the time, but the following year it was again introduced and passed.

P. 137: Additional reference for question 17: Reinsch, Readings on American State Government, 404–414; 420–428.

P. 139: Judge Robert W. Archbold, of the Commerce Court, was impeached and convicted in 1913.

P. 165:

The tariff of 1913.

The Democratic tariff law of 1913 superseded the Republican Payne-Aldrich law of 1909 and made considerable reductions from the high protective duties that had been maintained for many years. The free list included such food stuffs as meats, eggs, fish, potatoes, and some kinds of flour; and there were reductions upon many other foods. Wool, leather, boots and shoes, lumber and other building materials, were also placed upon the free list; rates upon woolen articles were reduced about one-half and upon cotton goods about one-third. Upon the free list were farm implements and many materials used by farmers, steel rails, iron ore and a great many metal manufactures. The duty on sugar was to be reduced about one-half after March 1, 1914, and to be taken off entirely after May 1, 1916.

The income tax.

To provide for the loss of revenue caused thereby, an income tax was included. This taxed at the rate of one per cent. net incomes over $3,000 (or in the case of husband and wife, $4,000), exempting $500 for each minor child, not exceeding two. Additional taxes, ranging from one to six per cent., according to the amount of income, made the tax upon incomes over $20,000 considerably heavier. The corporation tax of 1909 was continued.

P. 173: References for the tariff act of 1913: Outlook, 92 : 872–876; Rev. of R's, 40 : 341–347.

P. 188:

The currency law of 1913.

Our monetary system was often criticised in the past as inelastic. That is, the amount of money in circulation did not increase and decrease readily in response to the demand for

money in business. A "stringency" in the money market (*i.e.*, scarcity of loanable cash) might cause a panic. To lessen this danger, Congress passed in December, 1913, an act providing for a system of Federal Reserve banks, from eight to twelve in number, each under the control of a board of nine directors. Over the entire system is a Federal Reserve Board consisting of the Secretary of the Treasury and the Comptroller of the Currency, *ex officio*, and five other persons appointed by the President. The National banks all own stock in the Reserve banks and keep reserve funds in them. These reserves may be shifted to any section of the country where there is need for more cash. When the demand for more money is general, as in the fall, at crop-moving time, new money may be issued to the local banks by the Reserve banks. The local banks must deposit as security for the redemption of these notes an equal amount of approved "commercial paper," *i.e.*, the promissory notes of business men; and in addition there must be a 40 per cent. gold reserve. When the demand for money becomes less active, this currency is retired.

P. 190: Additional question 9. The currency law of 1913. Outlook, 106 : 1–3; Literary Digest, 48 : 1–3; Indept., 76 : 565–568; 77 : 10; World's Work, 27 : 369–372; Rev. of R's, 49 : 131–135.

P. 196: On January 1, 1913, the parcels-post system was put into operation by the post-office department, Congress having passed legislation favoring this innovation. The plan proved successful from the day of its adoption.

Pp. 216–217:

The National Conventions.

Prior to the nominations for the Presidency in 1912, the usual plan was to select two delegates to the National Convention, chosen in district conventions, and four delegates at large, chosen in the State conventions of the various parties. In some States all of the delegates were selected in the State conventions. There was a steady growth of sentiment on the part of the people against the convention plan of nominating delegates, and the demand became so insistent for a "Presidential primary" that many State legislatures passed laws providing for this plan. Delegates to the Presidential nominating conventions of 1912 were elected by direct primary in Oregon, California, Nebraska, New Jersey, North Dakota, Wisconsin, Illinois, Maine, Maryland, Massachusetts, and Michigan.

Pennsylvania also has a modified direct primary law, and in a number of other States voluntary primaries were provided for.

P. 239: In 1913 President Wilson extended the merit system so as to cover all fourth-class postmasters except those who receive annually less than $180. Some 50,000 office-holders were included in this order.

P. 241: President Wilson has revived the custom of addressing Congress in person on special occasions.

P. 245: Mr. Knox, Secretary of State in President Taft's Cabinet, received $8,000 owing to the fact that he was in the Senate when the increase in salary was made. (See Article I, Section 6, Clause 2.) Congress voted, in order to allow his appointment, that his salary was to be $8,000.

P. 246: The Department of State was reorganized in 1909, at which time there was created a Division of Latin-American Affairs, and Divisions of Far Eastern, Near Eastern, and Western European Affairs.

P. 254: The report of the Commissioner of Pensions for 1913 shows that that year there were 1,000,000 pensioners, who were paid approximately $180,000,000.

P. 257: In 1913 the new Department of Labor was established and the Department of Commerce and Labor became the Department of Commerce. The Bureau of Immigration was transferred to this Department and the Children's Bureau, established in 1913, was transferred to the Department of Labor. The Division of Naturalization was made a Bureau.

P. 275: The executive officers of Alaska are the Governor, Attorney-General, and Surveyor-General, the last acting as Secretary of the Territory. The judiciary consists of three district judges. All these officers are appointed by the President and Senate. In 1912 Congress provided for a popularly elected legislature consisting of two houses, one of eight and the other of sixteen members. Its laws are subject to approval by Congress.

P. 294: Amendments to the Constitution:

Amendment XVI.

The Congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several States and without regard to any census or enumeration.

The Constitution remained unchanged for forty-three years when the XVIth Amendment was adopted by the requisite number of States, February 3, 1913.

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature. Amendment XVII.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies. Provided, that the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

P. 309:

SECT. III. 1. The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; when vacancies happen in the representation of any State in the Senate the executive authority of such State shall issue writs of election to fill such vacancies. Provided, that the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

P. 323: Amendments to the Constitution of the United States ratified in 1913:

ARTICLE XVI.—The Congress shall have the power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

ARTICLE XVII.—The Senate of the United States shall be composed of two Senators from each State, elected by the peo-

ple thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

When vacancies happen in the representation of any State in the Senate the executive authority of such State shall issue writs of election to fill such vacancies. Provided, that the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

did not possess the power of establishing such a corporation, since it was not *expressly* granted by the Constitution. When President Washington referred it to his Cabinet for consideration, Jefferson took a similar position. Hamilton maintained, on the other hand, that the power was *implied* in the foregoing clause, and that if the bank were "necessary and proper to carry out any specific powers, such as taxation and the borrowing of money, then Congress might create a bank or any other public institution to serve its ends."

The positions of political parties.

We have here the first assertions of the doctrines of the strict and loose constructions of the Constitution. A few of the other great questions, besides that of the United States Bank, which have led to the definition of these views have been, Has Congress the right to make appropriations for internal improvements? Does the Constitution allow the establishment of a protective tariff or the acquistion of territory? Is not the making of paper money legal tender unconstitutional? In general, the views on the interpretation of the Constitution held by Hamilton and the Federalists have been those of the Whig and the Republican parties, and those held by Jefferson and the anti-Federalists have constituted the guiding principles of the Democratic party. Strictly speaking, however, the party in power have been loose constructionists and their opponents have been strict constructionists. A study of the questions just indicated shows that there has been present the tendency, throughout the history of our nation, to advance the principle of the broad interpretation of the Constitution, and this has led to the taking of an advanced position by the party of strict interpretation. Thus the Democratic party of 1850 would be considered the party of liberal interpretation if compared with the Democratic-Republican party of Washington's administration.

Mr. Bryce has well said: "The interpretation which

has thus stretched the Constitution to cover powers once undreamt of may be deemed a dangerous resource. But it must be remembered that even the Constitutions we call rigid must make their choice between being bent or being broken. The Americans have more than once bent their Constitution in order that they might not be forced to break it." *

Supplementary Questions and References

1. What are some of the difficulties encountered in becoming a citizen? Independent, 65 : 994–1000.

2. The following references are good on the subject of postal reform: Forum, 24 : 471–475: 723–728; N. Am. Rev., 166 : 342–349; 172 : 420–430.

3. For postal savings-banks in Great Britain, see Arena, 33 : 31–37; 35 : 590–592.

4. For parcels post in Europe, see Arena, 34 : 113–119.

5. Should there be a system of postal telegraphy? Cen. Mag., 59 : 952–956; N. Am. Rev., 172 : 554–556.

6. For the methods employed in the patent office and a comparison between our system and that of European nations, see The United States Patent Office, Cen. Mag., 61 : 346–356.

7. Describe the organization of our army. Harper's Mag., 80 : 493–509; Forum, 21 : 34–43.

8. For an interesting account of the army and navy at the opening of the war with Spain, see Lodge, Harper's Mag., 98 : 833–858.

9. How is the success of our navy in the war with Spain accounted for? Atl. Mo., 82 : 605–616; Scribner's Mag., 24 : 529–539.

10. The process of the construction and cost of a battle-ship. Cen. Mag., 48 : 347–352.

11. The process of building a dreadnought. Rev. of R's, 39 : 749–750.

12. Our naval progress compared with other nations. Rev. of R's, 17 : 70–71; 39 : 347; World's Work, 21 : 13898–13902.

* Bryce, American Commonwealth, I, 390.

13. The costliness of war, see Arena, 36 : 337–344.

14. Should the navy be enlarged? Indept., 38 : 589–594.

15. Message of President Roosevelt on the army and navy, 1907. Reinsch, Readings on American Federal Government, 610–618.

16. The significance of the world cruise of the fleet, 1907. Rev. of R's, 37 : 456–463; 38 : 281.

17. What special problem was connected with the location of the capital? How was it finally settled? Hart, American History Told by Contemporaries, III, 269–272; Schouler, I, 152–156; McMaster, I, 555–562.

18. The development of Washington during the one hundred years of its existence is discussed in Rev. of R's, 22 : 675–686; Forum, 30 : 545–554.

19. For the influence of the implied powers, see:

a. Internal improvements. American History, 277; Hart, American History Told by Contemporaries, III, 436–440; Walker, The Making of the Nation, 204, 205, 262, 263; Hart, Formation of the Union, 227–229, 253–255.

b. The United States Bank. American History, 220–222, 286; Hart, American History Told by Contemporaries, III, 446–450; Hart, Formation of the Union, 150–151, 226–227; Walker, The Making of the Nation, 82–83.

c. The annexation of territory. American History, 247; Hart, American History Told by Contemporaries, III, 373–376; Walker, The Making of the Nation, 177–184; Hart, The Formation of the Union, 188.

d. Legal tender cases. American History, 378, 388; Wilson, Division and Reunion, 280–281.

20. Make a list of the powers of Congress thus far discussed. See article I, section 8. Mention in connection with as many of these as possible some action of Congress taken by virtue of the power stated in clause 18 of section 8.

CHAPTER XXI

POWERS DENIED THE UNITED STATES AND THE SEVERAL STATES

Prohibitions on the United States.

AFTER an enumeration of certain powers granted to Congress, we come next to consider those retained by the people. They represent the fruits of centuries of contests which not even the representatives of the people should be privileged to destroy. In like manner, at the time of the formation of the Constitution it was desirable that the general government should be protected from the encroachments of the individual States.

Slave trade prohibited.

Traffic in slaves was general among civilized nations in 1787. It is satisfactory to note, therefore, that a majority of the delegates in the Convention favored the prohibition of the slave trade immediately. All of the States, Georgia, North Carolina, and South Carolina excepted, had already prohibited it. Through fears that the adoption of the Constitution would be endangered, a concession was finally made to these States by a compromise which provided that the slave trade should not be prohibited for a period of twenty years.

Article I, section 9, clause 1.

The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Such a tax was never imposed. It was found that the law of 1807 which was to take effect January 1, 1808,

and thus carry out the intention of this clause, did not wholly stop the traffic. Congress, therefore, in 1820, declared the slave trade to be piracy punishable with death.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it. Section 9, clause 2.

A writ of *habeas corpus* is a writ granted by a court commanding an officer to produce before it the body of a prisoner, that the court may inquire into the cause of imprisonment or detention. If after such inquiry, it is found that a person is detained for insufficient cause, he is given his freedom. Congress has been given, by judicial decision, the right to suspend the writ in case of rebellion or invasion, but may grant this right to the President.* *Habeas corpus.*

No bill of attainder or ex post facto law shall be passed. Clause 3.

"Bills of attainder are such special acts of the legislature as inflict capital punishments upon persons supposed to be guilty of high offences, such as treason and felony, without any conviction in the ordinary course of proceedings. If an act inflicts a milder degree of punishment than death it is called a bill of pains and penalties." The great abuses under such a law grow out of the fact that persons may be deprived of life, liberty, or property without judicial procedure, and such action would be intolerable in the United States. Bill of attainder. Story, On the Constitution, II, 216.

The Supreme Court has given the following definition: "An ex post facto law is one which renders an act punishable in a manner in which it was not punishable when it was committed. The phrase applies to acts of a criminal nature only. . . . Laws which mitigate the character or punishment of a crime already committed, may not fall within the prohibition, for they are in favor of the citizen." † Ex post facto laws. Story, On the Constitution, II, 220, 221.

* For President Lincoln's use of this writ, see American History, p. 391.

† Section 9, clause 4, is discussed under National Finances, p. 167. Section 9, clauses 5 and 6, are discussed under Commerce, p. 174.

Clause 7.

No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

Care of public money.

It is proper in a government such as ours that the control of the public money should be lodged with the representatives of the people. Through the annual report of the Secretary of the Treasury, the people may know from what sources our revenues are derived and for what purposes the money is expended.

Clause 8.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever from any king, prince or foreign state.

Titles of nobility.

An amendment proposed in 1809 provided that any one who accepted a title of nobility, or, without the consent of Congress, a present, office, or emolument from any foreign sovereign or state should cease to be a citizen of the United States and be incapable of holding any office therein. That the spirit of antagonism to a titled citizenship was general is shown by the fact that this amendment passed both Houses of Congress, received the sanction of twelve States, and failed of ratification by only one vote.

Gifts from foreign states.

It was hoped through the second part of the clause that public officers would be removed from the dangers of bribery by foreign nations. Congress may allow gifts to be accepted by our officials but usually they pass into the control of the government.

Section 10, clause 1. Absolute prohibitions on the States.

No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal, coin money, emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

The States and money.

It is obvious that the power to enter into treaties, alliances, and confederations or to grant letters of marque and reprisal should be confined to the general government alone. Otherwise, there would be constant danger that the individual States might enter into alliances or grant privileges which would tend to destroy the Union. Congress had already been given the power to coin money and regulate its value. Hopeless confusion must ensue were the States to be given like powers. During the colonial and revolutionary periods there were many notable examples of the evils which always followed the issue, by the States, of paper money designed to circulate as a legal tender.

Obligation of contracts.

When two or more persons enter into a compact "to do or not to do a particular thing" which is legally binding upon them, no State may, in any way, modify this agreement. This interpretation was established by the decision in the celebrated Dartmouth College case.*

Section 10, clause 2. Conditional prohibitions on the States.

No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

Section 10, clause 3. Other conditional prohibitions on the States.

No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war, unless actually invaded or in such imminent danger as will not admit of delay.

Were the States given power to lay tonnage dues (a tax on ships by the ton according to their carrying capacity),

* See Magruder, John Marshall, American Statesman Series, 190–193; American History, p. 286.

it would interfere with the regulation of commerce by Congress. No justification for the remaining prohibitions is needed, for if these powers were possessed by the States the Union might quickly be destroyed.

CHAPTER XXII

THE EXECUTIVE DEPARTMENT

Nomination of President and Vice-President

The great weakness of the government under the Confederation grew out of the fact that there existed no adequate executive. The desire to remedy this defect was general and all of the plans submitted in the Constitutional Convention made provision for an executive. There was no agreement, at first, as to whether the executive power should be vested in one person or more than one. The fear of a monarch was deep-seated in the minds of the people. Finally, the desire to secure energy in the execution of governmental affairs and responsibility led to the determination to provide for a single executive. The Executive.

It was proposed in the draft submitted by Mr. Pinckney, that the executive power should be vested in a President of the United States of America who should have the title, "His Excellency." * The term President was in common usage; Congress had called its chief officer President, and the chief magistrates in some of the States bore the same name. Much discussion was aroused over the question of the proper duration of the term of office. Hamilton and Madison favored a continuance in office during good behavior. A term of three years and one of Title and length of term of the Executive.

* The proposition was made, in Congress, soon after the government went into operation, that some more dignified title should be applied to the President. "His Highness, the President of the United States and Protector of their Liberties," "His Patriotic Majesty," "His High Mightiness," and other aristocratic titles were suggested. But an agreement was reached that he should be addressed in official documents as the "President of the United States."

seven years were also recommended during the early days of the Convention. The proposition to choose the Executive for seven years was at first carried by a majority of only one vote; but when the clause, "to be chosen by the National Legislature," was added, eight States agreed to it. That the President should not be eligible for reelection was determined by the same number of votes. So the clause stood in the first draft of the Constitution. Toward the close of the Convention, upon recommendation of a committee that the method of election previously agreed to should be changed, the length of term was fixed at four years. It was then declared, too, that by this change the President might be elected for more than a single term. So the clause finally read:

Article II, section 1, clause 1.

The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows:

Method of election.

No problem in the Constitutional Convention was more difficult of solution than that of determining the method by which the President was to be chosen, and it is said to have occupied one-seventh of the entire time of the Convention. Many plans were proposed. Among them were those which provided for the selection by Congress; by the people; and by Electors who should be appointed as the State legislatures might direct. The method most in favor for a considerable time proposed that the President should be chosen by Congress. The argument which led to a reversal of the decision toward the end of the Convention was that the President would be liable to become a tool in the hands of the dominant party in Congress. This desire to escape any official influence led to the adoption of the clause that: "No Senator or Representative, or person holding a position of trust or profit under the United States, shall be appointed an Elector." There was

general distrust of the method of election by the people because of the "tumult and disorder" which it was believed would be the accompaniment of such an important choice. Then, too, the belief was general in the Convention that the people would not be sufficiently well informed concerning the qualifications of men who were suitable for the Presidency.

The Convention at last decided in favor of giving the selection of the President and the Vice-President into the hands of independent Electors, whose appointment was provided for as follows:

Section 1, clause 2. Appointment of Electors.

Each State shall appoint, in such manner as the legislature thereof may direct, a number of Electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an Elector.

Many different methods of choosing Electors have been used. The favorite at first was that each State legislature chose the Electors for its State. South Carolina used this method until 1868. The district method has also been used, by which an Elector is chosen in each of the Congressional districts and two for the State at large. This method, which most nearly expresses the wishes of the people, has been used but once since 1832.* At the present time, the Electors are elected in each State on a general ticket by direct vote. Each political party nominates a "number of Electors equal to the whole number of Senators and Representatives to which the State may be entitled in Congress."

The nominations of candidates for the office of Elector

* In 1892 Michigan chose her Electors by districts. A test case was brought before the United States Supreme Court on the ground of unconstitutionality. It was decided that the Legislature had acted within its powers, but two years later the law was repealed.

are usually made at the State Conventions of the different parties when they nominate State tickets. These occur usually in August or September preceding the November election. Each person then votes for the entire number of Electors to which his State is entitled, and will naturally vote for all the Electors of his party ticket. The political party, therefore, which receives the majority of the votes in a State secures all the Electoral votes of that State.*

Nomination of candidates for President and Vice-President.

It was originally intended that the Electors should exercise the right of free choice, but on account of the growth of the power of political parties they do not. They are pledged to vote for candidates already nominated in party conventions. So we know the day following the election who is to be the next President. The framers of the Constitution did not anticipate such an influence and considered no plans for nominating candidates. But as this has become the real method by which Presidents are selected, we shall consider next the place of National Conventions.

The National Conventions.

The National Conventions of both the great parties are made up of twice as many delegates from the different States as these States have Representatives and Senators in Congress. The four delegates representing twice the number of Senators are known as delegates-at-large. There are also chosen as many alternates as delegates.

* It has sometimes happened, however, when the election in a State has been close that one or more of the Electors on a minority ticket have run ahead of the other candidates on that ticket and have secured a larger number of votes than candidates on the majority ticket, thus obtaining an election. California, in 1892, gave one Electoral vote to Mr. Harrison and eight to Mr. Cleveland, and again, in 1896, gave eight votes to Mr. McKinley and one to Mr. Bryan. Kentucky, in 1896, cast twelve votes for Mr. McKinley and one for Mr. Bryan.

Instances have occurred in which two weaker political parties have combined in their Electoral ticket against a stronger party and by such a *fusion* have been able to carry a State, thus dividing the Electoral votes of that State between them.

These delegates are chosen by Conventions in the different States in April or May of the Presidential election year. According to the prescribed method, in the Republican party two delegates are selected for each of the Congressional districts by the district Conventions of each party and the four delegates-at-large are chosen by the State Conventions. Delegates in the Democratic party may be chosen in State Conventions or in district and State Conventions. New Jersey, Wisconsin, Nebraska, North Dakota, Oregon, and California provide by statute for a Presidential primary. It is endorsed by the Progressives in other States.

Work of the National Convention.

The National Convention is held in some leading city during the month of June or July of the year in which a President is to be elected. A few days before the day set for the Convention the delegates, together with many thousands of politicians, newspaper reporters, and sightseers, flock to that city. Headquarters are established and delegations are "labored with" in behalf of the different candidates. On the day appointed, the Convention is called to order by the chairman of the National committee under whose auspices the Convention is to be held. A temporary chairman is elected, clerks and secretaries are appointed, and rules for the government of the Convention are adopted. Committees are then made up, the most important being those on credentials, which decides the questions of contested seats; on permanent organization, and on resolutions, and the Convention adjourns to await their reports. In the next session, a permanent chairman, secretary, and other officers are selected. On the same day or the next the report of the committee on resolutions, which sets forth the platform embodying party doctrines and principles, is given.

Usually on the third or fourth day the nominations are made. The roll of States is called and the names of the various favorites are placed before the Convention as their

home States are reached. A State sometimes waives its privilege in behalf of some other State which has a candidate to present. Again, the clerk calls the roll of the States and each chairman of a delegation announces the votes from his State. In the Democratic party the majority vote of the delegates from a State determines how the whole vote of that State must be cast. When Republican delegates are not instructed each may vote as he pleases. In the Republican Convention, a majority of the number of delegates voting is sufficient for nomination. No nomination is possible in the Democratic Convention except by the vote of two-thirds of the delegates voting. Then follows the selection of a candidate for Vice-President. In this choice the attempt is made to secure some man who will add strength to the party and who comes from a different section of the country from that represented by the candidate for the Presidency. He may, as in the cases of Tyler and Johnson, represent a faction of the party that is not in entire agreement with the majority.

The National Committee.

A National Committee is also appointed, made up of one member from each State, nominated by the State delegation. This committee is elected before the nominations have been made. The wishes of the nominee prevail in the choice of the chairman. The committee occupies a position of great importance, for by it the platform of the party is largely determined. We have here a body of men not mentioned by the Constitution but exerting vastly greater influence upon the election of President than does the Electoral College itself. The campaign is organized by this committee. Money is secured, speakers are selected, and party literature is sent out by it. The committee looks after the interests of the party during the ensuing four years and issues the call for the next National Convention.

Campaign fund.

Some idea of the extent of the National Committee's power may be gathered when we consider the size of the campaign fund intrusted to its care. It is said that the whole cost of conducting the campaign in which Mr. Lincoln was elected for the second time amounted to $100,000. The amount of money spent by each of the two National Committees in 1900 is estimated at $5,000,000. A large proportion of this sum was expended in the establishment of National Committee head-quarters, in the publication and distribution of campaign literature, and in meeting the expenses of speakers. Two significant reforms were introduced in the election of 1908. (1) By an act of 1907, Congress forbade corporations to make contributions to campaign funds in Federal elections. (2) The Democratic platform demanded publicity in campaign expenses and Mr. Taft, as the Republican candidate, announced that all contributions would be made public after the election.

Early methods of nominating.

Like the development of other political usages, the method of nominating a President passed through several stages before the present plan of nominating conventions was reached. No nominations were made in the first two Presidential elections and Washington was elected as provided for by the Constitution. In 1796, Washington having refused to be a candidate for a third term, party managers in Congress agreed informally on Adams and Jefferson as the candidates of the Federalist and the Republican parties. A caucus of Federalist Congressmen, in 1800, nominated Adams and Pinckney, and a caucus of Republican Congressmen nominated Jefferson and Burr for the offices of President and Vice-President. The Republican members of Congress continued to hold a regular caucus and thus direct the votes of the party Electors until 1824. In that year William H. Crawford, the last Congressional nominee, was defeated. There was opposition to the Congressional caucus from the beginning, for such a method was regarded as undemocratic. In 1824 and 1828, the several State legislatures put forward their favorites for the office of President.

Nomination by National Conventions.

The National Nominating Convention, as we know it, was used for the first time by the Anti-Masonic party which selected William Wirt for its candidate in 1831. This method was followed in the same year by the National Republican party which nominated Henry Clay. The

National Convention of the Democratic party in 1832 nominated Andrew Jackson, who had already been nominated by many local Conventions and State legislatures. Many years elapsed before the present complex organization was reached, but since 1836, with the single exception of the Whig party in that year, parties have regarded the National Convention as an essential factor in electing President and Vice-President.

Supplementary Questions and References

1. July 9, 1789, the Constitutional Convention, by a vote of 9 to 1, fixed on a term of six years for the President with no re-election. Would this be a desirable change at present? Presidential Elections Paralyzing to Business, Forum, 22 : 563–570.

2. Why was it thought best to make the President eligible to re-election for more than one term? Madison, Journal of the Constitutional Convention, 369; The Federalist, No. 72.

3. What led to the understanding that a President was to be elected for only two terms? Is there good reason for holding to this tradition? McMaster, The Third Term Tradition, Forum, 20 : 257–265; Eaton, The Perils of Re-electing Presidents, N. Am. Rev., 154 : 691–704.

4. What Presidents have served two terms? How was their election for a second term to be accounted for? See American History.

5. The method of calling National political conventions. When held? Questions considered? Make a study of the last conventions. Thurston, How Presidents are Nominated, Cosmop., 29 : 194–200; Maurice Low, How a President is Elected, Scribner's Mag., 27 : 643–656; Republican Convention, 1908, Rev. of R's, 38 : 8, 9; Democratic Convention, 1809, Rev. of R's, 38 : 178–184.

6. What is a "dark horse" in a National Convention? Give instances in our history.

7. Under what conditions was the first platform of a National Convention agreed upon? Wilson, Division and Reunion, 63.

8. Compare the chief planks given in the various party platforms of the last Presidential election. Do the successful parties generally fulfil the pledges of their platforms?

9. For the work of the National Committee, see Rev. of R's, 22 : 549–563.

10. What was the probable origin of the system of electing a President by Electors? Fiske, Critical Period of American History, 66 : 280–289.

11. For the methods which have been used in electing a President, see N. Am. Rev., 171 : 273–280.

12. How was the method of electing the President by independent Electors regarded at the time of the adoption of the Constitution? The Federalist, No. 68.

13. Should Electors for President and Vice-President be elected by the vote of Congressional districts with two at large for each State instead of upon a general ticket? Forum, 12 : 702–713; N. Am. Rev., 154 : 439–446; The Federalist, No. 68; Bancroft, History of the United States, VI, 328–340.

14. Should the President be elected by direct popular vote? Indept., 68 : 191–194; Outlook, 90 : 299–303; 776–777; N. Am. Rev., 171 : 273–288 ; Schouler, Grave Dangers in Our Presidential Electoral System, Forum, 18 : 532–536; Carlisle, Dangerous Defects in Our Electoral System, Forum, 24 : 257–266; 651–659; Scribner's Mag., 27 : 643–656.

15. For arguments in favor of and opposed to a Presidential primary, see Outlook, 100, 164, 165.

16. For campaign expenses, 1908, see Rev. of R's, 38: 139; 432–438.

CHAPTER XXIII

THE ELECTION OF A PRESIDENT

HAVING considered the method by which a President is nominated and that by which the Electors are chosen, we are now prepared to discuss the way in which the Electors choose a President, for the steps prescribed by the Constitution must still be followed, although the election has been practically decided by popular vote. The function of the Electors is given in Article XII of the Amendments.

Function of the Electors.

The Electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign, and certify, and transmit, sealed, to the seat of government of the United States, directed to the President of the Senate;—the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted;—the person having the greatest number of votes for President shall be the President, if such number be a majority of the

Amendment XII.

whole number of Electors appointed; and if no person have such majority, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this

purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right to choose shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of Electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Meeting of the Electoral Colleges.

The Electoral Colleges, made up of the Electors in the several States, are all required to meet on the second Monday in January. Each Electoral College must meet in its own State, usually at the State capital. After the Electors have voted for President and Vice-President separately, three lists are made of all the persons voted for as President and as Vice-President and the number of votes for each. These lists are then certified to, signed by the Electors, and sealed. One of the lists is carried by a special messenger to the President of the Senate at Washington; another is sent by mail to the same officer, and the third is deposited with the United States District Court Judge of the district in which the Electoral College meets.*

* If neither of the other lists has been received by the President of the Senate by the fourth Monday in January following the election, he may send a special messenger to obtain the list deposited with the District Judge.

Counting the Electoral votes.

These votes are opened by the President of the Senate in the presence of the Senate and the House of Representatives on the second Wednesday in February, and the votes are counted. The person having a majority of all the Electoral votes cast for President is declared to be duly elected President of the United States, and the person who has a majority of the Electoral votes cast for Vice-President is declared duly elected Vice-President of the United States. Contrary to the expectation of the Constitutional Convention, the votes cast by the Electors since 1800 have been merely a form of registering the popular verdict. While there is no law which prevents an Elector from voting for candidates other than those on his ticket, still the custom of voting only for his own party candidates has become as binding as any statute.*

Amending the Constitution by usage.

Thus, in the election of a President, we have an excellent illustration of what has been styled "Amending the Constitution by usage." "The difference between the actual and the Constitutional modes is the difference between an ideal non-partisan choice and a choice made under party whips; the difference between a choice made by independent unpledged Electors acting apart in the States and a choice made by a National party Convention."†

Election of a President by the House of Representatives.

If none of the candidates receives a majority of the Electoral votes, the House of Representatives must proceed immediately to choose a President from the three candidates having the highest number of Electoral votes.

* The most notable exception was in the election of 1872, when sixty-six Electors were pledged to vote for Horace Greeley for President. Mr. Greeley died before the meeting of the Electoral Colleges. When they met, the votes of the Electors were divided between two prominent Democrats, with the exception of those of three Electors who still insisted in carrying out instructions by casting their ballots for Mr. Greeley. The question arises, What would have been the solution of the problem were a majority pledged to vote for him?

† Wilson, Congressional Government, 243, 244.

In 1825 the House was called upon to choose a President from the three highest candidates; Andrew Jackson, John Quincy Adams, and William H. Crawford. Mr. Adams was chosen President, having received the votes of thirteen out of twenty-four States, although he had fewer Electoral votes and fewer popular votes than Mr. Jackson.

The Vice-President.

The XIIth Amendment provides that if a President is not chosen by the House of Representatives "whenever the right of choice shall devolve upon them before the fourth day of March next following, then the Vice-President shall act as President," as in the case of the death, resignation, or removal of the President. There has been no such case in our history. It is also provided that if no person have a majority of the Electoral votes for Vice-President the Senate shall choose the Vice-President from the two candidates having the highest numbers on the lists. The one instance of the election of a Vice-President in this way occurred in 1837, when the Senate elected Richard M. Johnson, who had already received the highest Electoral vote.

Disputed returns.

The framers of the Constitution did not consider the question of appointing a tribunal to whom might be referred the returns of a State when in dispute, or to decide between two conflicting returns from two sets of Electors. By a joint rule adopted in 1865, the vote of any State, where there was objection made, was not to be counted except by agreement of both Houses of Congress. The votes of two States were rejected under this rule in 1873. On both dates the Senate and the House were under the control of the same political party.*

The wisdom of having uniform days when the Electors are to be chosen and when they must give their votes is almost self-evident. So the Constitution provides:

* For the Electoral Commission, 1876, see American History, p. 448.

Article II, section 1, clause 3.

The Congress may determine the time of choosing the Electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

Times of election and voting.

By such a provision, there is less opportunity for political intrigue and combination. The day on which the Electors were to be chosen was changed from time to time until 1845, when Congress enacted that the day should be the same throughout the United States. They selected the first Tuesday after the first Monday in November of the years exactly divisible by four. In nearly all of the States this is also the day for the election of State officers and is known as general election day. As already indicated, the second Monday in January is now the day on which all the Electoral Colleges are required to cast their votes. The President of the Senate sends for the missing returns on the fourth Monday in January. The certificates are opened and the votes are counted on the second Wednesday of February.

The first three Presidents were chosen by the method given in the original clause.

Section 1, clause 2. The original method of choosing the President.

"The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one, at least, shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they sign and certify, and transmit, sealed, to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of Electors appointed; and if there be more than one who have such a majority, and have an equal number of votes, then the House of Representatives shall immediately choose, by ballot,

one of them for President; and if no person have a majority, then, from the five highest on the list, the said House shall, in like manner, choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the Electors shall be the Vice-President. But if there should remain two or more who have equal votes the Senate shall choose from them, by ballot, the Vice-President.

According to this clause it will be noted that the Electors voted for two persons without stating which was to be President and which Vice-President. In the official count the candidate receiving the highest number of votes, provided it was a majority of the whole number of Electoral votes, became President and the one receiving the next highest became Vice-President.

Election of 1796.

Accordingly, in the election of 1796, John Adams, who received the highest number, 71, out of 132 Electoral votes, was elected President, and Thomas Jefferson became Vice-President, having received 68 votes or the next highest number. Evidently this was a weakness in the system of election which had not occurred to the makers of the Constitution. By it, the President and Vice-President might be of different political parties.

Election of 1800.

The election of 1800 showed the plan to be impracticable in another way.* The election went to the House of Representatives, where, on the thirty-sixth ballot, Mr. Jefferson received the votes of ten States out of sixteen and was elected. For seven days the House had been in continuous session and the country was in such a state of excitement that there was danger of civil war. In order to prevent a recurrence of the conditions which obtained in 1796 or of the dangers incident to a contest like that of 1800, the twelfth Amendment was proposed by Congress and after ratification was declared in force, September 25, 1804. This provides, as already seen, that the Electoral votes must be cast separately for President and for Vice-President.

* See American History, p. 237.

Minority Presidents.

In ten Presidential elections, while the successful candidate has received a majority of the Electoral votes, he has failed to receive a majority of the popular votes and is known as a minority President. Such a condition has happened so frequently that suggestions have been made looking toward the abolishment of the system of Electoral Colleges by amending the Constitution in such a manner as to provide for election by a direct popular vote.

The qualifications for the two offices are naturally the same.

Section 1, clause 4. Qualifications for President and Vice-President.

No person, except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

Both officials must be natural-born citizens of the United States. The exception that a person might become President who was a citizen of the United States at the time of the adoption of the Constitution was eminently just. At that time there were many notable men, among them Alexander Hamilton, who though foreign born had rendered efficient services in the winning of independence and in the organization of the government. It would have been an ungracious act were they excluded from any office in the gift of the people. Residence abroad, as a minister or other official under the government, does not disqualify a person from becoming President.

The chief reason for creating the office of Vice-President seems to have been to provide for the emergency of a vacancy in the Presidency.

Section 1, clause 5. Vacancies.

In case of the removal of the President from office or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability both of

the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

Presidential succession established in 1886.

By an act of 1886, Congress provided that the Presidential succession should be in the following order: the Secretary of State, the Secretary of the Treasury, the Secretary of War, the Attorney-General, the Postmaster-General, the Secretary of the Navy, and the Secretary of the Interior. When the Secretary of Agriculture was made a member of the Cabinet, in 1889, his name was added to this list. In case a Cabinet officer becomes President, he holds the office for the unexpired term.

Section 1, clause 6.

The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he may have been elected, and he shall not receive within that period any other emolument from the United States or any of them.

Congress fixed the annual salary of the President at $25,000. It remained the same until the year 1873 when it was raised to $50,000 and to $75,000 in 1909. The wisdom of fixing his salary so that it may not be increased or diminished during his term of office is apparent. Otherwise he would become a dependent upon the favor of Congress. The custom has been established that no President shall receive a gift from any civil body such as a city council, a State legislature, or a foreign state. In addition to his salary, the President is provided with an "executive mansion," the "White House," which is furnished at the expense of the government.

Salary of the Vice-President.

The salary of the Vice-President was fixed at $5,000 in 1789. This was changed several times before 1874 when it was made $8,000 and increased to $12,000 in 1909.

The maintenance of the Executive branch of the government costs less than $350,000 each year. This includes the salaries of

Cost of the Executive branch of the government.

the President, of the Vice-President, and of the President's private secretary and clerks; the purchase of furniture, carpets, fuel; care of greenhouses and White House grounds; binding and printing done by order of the President. The English government votes about $4,000,000 for the annual use of the royal household. The Czar of Russia receives $6,500,000 annually in addition to revenues derived from 1,000,000 square miles of crown domains. The President of France receives $231,600 annually. A private fund, known as the "contingent fund," is provided for our President each year by Congress. This varies in amount, $25,000 having been appropriated in 1910, may be expended as the President dictates, and some of the purposes for which it is used doubtless include special entertainments given by the President to noted foreign visitors; and the employment of officials to carry on some investigation relative to National affairs whose salaries have not been otherwise provided for and whose negotiations should be secret.

Special fund for the President.

Inauguration Day.

One of the most notable of our civic festivals occurs on the fourth of March of each fourth year, when the President and the Vice-President are formally invested with their offices. Thousands of people go to Washington to witness the inaugural exercises. The Constitution makes no further provision that than the President take the oath of office and enter upon his duties at a prescribed time.

Before he enter on the execution of his office he shall take the following oath or affirmation:

Section 1, clause 7.

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability preserve, protect, and defend the Constitution of the United States."

It has been established by custom that the oath is administered by the Chief Justice of the United States at the east front of the Capitol, but the oath might be administered by any other magistrate having the power of administering oaths. The Vice-President takes the oath of office shortly before in the presence of the Senate of

the United States. After taking the oath, the President gives his inaugural address, which outlines the policy he purposes to carry out in the execution of his duties.

Supplementary Questions and References

1. For some of the problems connected with the Electoral Colleges in the history of elections, see Rev. of R's, 23 : 66–69.

2. What is the method used in counting the Electoral votes? Edmund Alton, Among the Law Makers, 88–89.

3. Do you agree with Mr. Bryce that the tendency is to select men for President who have not been prominent? Bryce, American Commonwealth, I, chapter 8.

4. Was the present President notable before his election? In what ways?

5. What were the chief causes for the success of his party?

6. How many Electoral votes were required for election? He received how many? Did he receive a majority of the popular votes?

7. How many Electors were there from your State? For whom did they vote? How is this majority in your State to be accounted for? Election of 1908, Rev. of R's, 39 : 34.

8. Would successful governors make good candidates for President? In what particulars do the offices resemble each other? Would you favor making the governor of your State President? Wilson, Congressional Government, 253, 254.

9. Under what conditions did Aaron Burr become Vice-President? Harrison, This Country of Ours, 82; Walker, The Making of the Nation, 185; Hart, Formation of the Union, 173.

10. Why was the election of John Quincy Adams of especial interest? What results followed? American History, p. 290; Burgess, The Middle Period, 140–141; Wilson, Division and Reunion, 18.

11. State the chief points connected with the "disputed election" of 1876. American History, p. 448; Wilson, Division and Reunion, 283–286; Johnston, American Politics, 233–237.

12. What is the meaning and significance of "amendment by usage"? Can you give other examples of amendment in this

way? Bryce, American Commonwealth, I, chapter 34; Wilson, Congressional Government, 250.

13. Why was the "defence fund" of $50,000,000 necessary? Forum, 25 : 267–275.

14. Interesting accounts of inaugural incidents and personages:

a. Inauguration Scenes and Incidents, Cent. Mag., 35 : 733–740.

b. Davis, The Inauguration, Harper's Mag., 95 : 337–355.

c. Inauguration Events of 1901, Rev. of R's, 23 : 405–406.

15. The "White House," Indept., 55 : 2497–2507.

CHAPTER XXIV

POWERS AND DUTIES OF THE PRESIDENT

"UNITY of plan, activity, and decision are indispensable to success; and these can scarcely exist, except when a single magistrate is intrusted exclusively with the power." This is especially true in military affairs, hence the provision:

Story, On the Constitution, 327.

The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

Article II, section 2, clause 1. The President commander-in-chief.

Fears were expressed in the State conventions when considering the ratification of the Constitution lest the President might, under this provision, take charge of the army and navy in person, and as a dictator endanger the liberties of the Nation.

The monarch of Great Britain is commander-in-chief of the army and navy and militia; he has power to declare war, and in time of war can raise armies and navies and call out the militia. Parliament may check his action only by the refusal to vote supplies. The Emperor of Germany must obtain the consent of the Bundesrath, or upper house, before he may declare offensive war. The President of France may not declare war without the advice of the Chambers.

Military powers of other rulers.

The temporary suspension of the execution of a sentence is called a reprieve. By means of a reprieve, the

Reprieves.

President may gain time to look into the evidence more carefully in order to ascertain whether there is good reason for granting the requested pardon.

Complete release from a sentence is secured by a pardon. The power to pardon also carries with it the right of commuting the sentence. By this, a decree calling for imprisonment for life may be reduced to a fixed term of years, or a death penalty may be mitigated to imprisonment for life, etc.*

Section 2, clause 2. Treaties.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur.

While the power to conclude treaties seems to be without restriction, it is implied that no treaty shall in any way interfere with the authority of the Constitution. The usual steps in the negotiation of treaties are as follows: (1) In time of peace they are conducted at the capital of the nation that begins the negotiation. If this is in Washington, the terms are considered by the Secretary of State and the minister of the other nation. If in a foreign capital, our minister acts under instructions sent him by the Secretary of State. (2) At times one or more special ministers are sent abroad for the purpose of negotiating for a treaty. (3) The treaty of peace at the close of a war is usually negotiated in some neutral country by special commissioners appointed by the belligerent nations.

In all cases, the President exercises general control over the negotiation and framing of treaties. After an agreement has been reached, the treaty is sent to the Senate. It is discussed in Executive Session, in which all matters pertaining to it are kept secret until a resolution of the

* President Harrison considered, during his term, 779 pardon cases, not including reprieves. Of these 527 were granted in whole or in part. President Cleveland acted on 907 such cases and granted 506 in whole or in part.

Senate removes the decree of secrecy. The Senate may approve, reject, or modify the terms. If amendments are made, they must be agreed to by the President and the other nation interested. When a treaty has been finally approved by the officials of both countries, duplicate copies of it are made in parchment. Both of these copies are signed by the chief officers of each country and the copies are then exchanged. This is called the "exchange of ratification." An official copy of the treaty is thus secured by each nation. The President then publishes the treaty, accompanied by a proclamation, in which it is declared to be a part of the law of the land.

Section 2, clause 2. Executive power of appointment.

He shall nominate, and by and with the advice and consent of the Senate, shall appoint Ambassadors, other public ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

Section 2, clause 3.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

The methods of making appointments may be classified as follows:

(1) By the President with the consent of the Senate. In addition to the Ambassadors, other public ministers and Consuls and Judges of the Supreme Court who secure their offices in this way, there are a large number of other officers whose positions have been established by law who are appointed in the same manner. Among the most important of these officers are the heads of the executive departments, Treasurer of the United States, Internal Revenue, Inter-State Commerce Commission, Comptroller of the Currency, Superintendents of Mints, Com-

missioner of Patents, Commissioner of Pensions, Pension Agents, Collectors of Customs and Internal Revenue, Land Agents, Indian Agents, District Attorneys, Marshals, Territorial Governors, Postmasters whose salaries are $1,000 and over, and all Military and Naval Officers, unless otherwise ordered by law.

(2) The President alone has the power of appointing the clerks in his office.

(3) The Judges appoint the officers of their own courts.

(4) The heads of the departments appoint their subordinates with the exception of some of the principal ones, whose appointment is secured through nomination by the President and confirmation by the Senate.

Action of the Senate on nominations.

All of the nominations sent by the President to the Senate are submitted to appropriate committees, as Postmasters to the Post-Office Committee, Ambassadors to the Committee on Foreign Affairs. The report of the committee is considered in executive or secret session and the nomination is then voted on. If the vote is adverse, the President must make another nomination.

Official patronage.

In making his appointments, the President is largely dependent upon the advice of the head of that department under whose direction the officer will come, or upon the recommendation of the Representatives and Senators of his party from the State in which the office is located. This power of official patronage through which political assistants in a State may be rewarded with a Federal office has become so burdensome that many Congressmen complain of it and express the desire to be freed from its exactions.

Senatorial Courtesy.

There has grown up an almost invariable custom, known as Senatorial Courtesy. By it, no appointment can be confirmed unless it meets the sanction of one or both of the Senators of the State in which the office is located, provided they are members of the party then in control of the Senate.

Removal from office.

During the first forty years of our government, the views of the founders with regard to appointment and removal from the civil service were generally upheld. It was evi-

dently their intention that postmasters, collectors of the revenues, and officials of this nature were to be regarded as clerks or agents appointed to assist in carrying on the government. It was believed that these non-political offices should be filled without regard to any personal or political favor and that an officer might retain his position so long as he rendered faithful and efficient service. The rule advocated by Madison that the President might remove officials without the consent of the Senate was acknowledged by Congress. Under its operation, the entire number of removals from office between Washington's first administration and that of Jackson was only seventy-four, and five of the officers removed were defaulters.

Rotation in office.

It was during this period that William Henry Crawford, Secretary of the Treasury, hoping to pave the way for his nomination as a Presidential candidate, secured the passage in 1820 of the "four year tenure act" by which most of the officials of the National government who collected and paid out public money were to have their terms of office limited to four years. Thus was made possible the dangerous political device, known as "rotation in office." Webster, Clay, Calhoun and other statesmen spoke of the evils growing out of such a law, but it is still in force.

Fourteenth Report United States Civil Service Commission, 1896–97, 36.

The Spoils System.

The "Spoils System," by which appointive offices are to be regarded as bribes or rewards for partisan services, was in use in Pennsylvania as early as 1790, and was introduced into New York by 1800,* but did it not become a permanent feature of our government until Jackson became President. The Whigs denounced this abuse of the civil service on the part of their opponents, and promised, if elected, to make the needed reforms. But the pressure upon them was too great, for no sooner were they given power by the election of 1840 than the sacrifice of Demo-

* Jackson and the Spoils System. See American History, 306.

cratic office-holders began. From this time down to 1883, whenever there was a change of administration, and especially when this meant the victory of a different political party, a "clean sweep" of the offices was thought to be necessary.

The evils of the system were indicated in the reports of special committees appointed by the different Congresses and numerous efforts at reform were made.*

The Pendleton Bill.

Finally, January 16, 1883, Congress passed the "Civil Service Law," which in general still governs the Federal service. This act established the United States Civil Service Commission, which was to be composed of three members, not more than two of whom should belong to the same political party. Other provisions of the act and the rules for carrying it out are: That there shall be open, competitive examinations for testing the fitness of the applicants for the public service in the departments at Washington, and in the custom-houses and post-offices where at least fifty officials are employed; that when a vacancy exists in any office in either of these classes it shall be filled from the three applicants graded highest in the list of those who have passed the competitive examination; that the final appointment shall not be made until after a trial of six months in the office. The law does not extend to positions outside the Executive branch of government, to positions for which appointment is made by the President with the consent of the Senate, or to places of unskilled labor. The President is given the power to direct the further extension of the "classified service," or positions which are to be filled by persons who have taken the examinations.†

The number of offices originally included under the act was about 14,000. The classified offices reported June

* See American History, pp. 445, 446, 462.

† See American History, p. 495.

30, 1910, numbered 235,000, and those which were unclassified or excepted 133,000. Some 75,000 of the unclassified offices were fourth-class post-offices in which a salary of less than $1,000 is paid.

The ordinary civil service examinations are held twice each year at such places throughout the country as are designated by the Commission. Much has been accomplished since the law went into effect, but it is to be hoped that the system will at an early date be extended to the offices still unclassified,* and that the effective reform work already done in some of our States and cities † will become general throughout the country. Two other provisions of the act have also brought about a vast improvement in our civil service. One of these provides that official authority and influence shall not be used to coerce the political action of any citizen; and the other, that no person in the public service is under obligation to contribute to any political fund or to render any political service.

Rule for removals.

The President may remove an officer during the session of the Senate by nominating, and by and with the advice and consent of the Senate, appointing his successor. If the removal is made during the recess of Congress, the newly appointed officer receives his commission and enters upon his duties at once. If, when the Senate convenes, it refuses to confirm the appointment, the President makes another nomination. A most important order was issued July 27, 1897, which provides that "No removal shall be made from any position subject to competitive examina-

Civil Service commission Report, 1896–97, 24.

* During the years 1901–1902 there were included in the competitive system by order of President Roosevelt the rural free delivery service, permanent employees of the Census Office, and those additional employees necessary because of the war with Spain. In 1908 he extended the application of the merit rule so as to include 15,000 fourth-class postmasters. President Taft, in 1909, placed under the classified service, assistant postmasters in first- and second-class offices and all of their clerks.

† See pp. 30–31.

tion except for just cause and upon written charges filed with the head of the department or other appointing officer, and of which the accused shall have full notice and an opportunity to make defence." An act of 1866, still in force, provides that "No officer in the military or naval service shall, in time of peace, be dismissed from service except upon, or in pursuance of, the sentence of court-martial, to that effect or in commutation thereof."

Vacancies.

When an office becomes vacant during the recess of the Senate, the President appoints as in the case of removal during the recess. If the Senate fails to act on the nomination before the adjournment, the President must then issue a new commission to the same or another person.

Article II, section 3. Duties of the President.

He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect of the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive Ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Enforcement of the laws.

The most important duty of the President is to see that all laws passed by Congress are faithfully executed. Laws are useless unless they are enforced, and it is chiefly for the performance of this task that the Executive was originally created. It is not contemplated that this duty shall be performed by him in person, but through officials who are directly responsible to him. The United States marshals and their deputies exercise a wide influence in seeing that the laws are enforced. They usually act under an order from a United States court, but may, at times, act without such a writ. If necessary, the President may send the army and navy of the United States and

call out the militia of the States to overcome any resistance to Federal law.

Presidential messages.

By means of the annual message sent to Congress at the opening of the session, and special messages on particular occasions, the President is enabled to call attention to the legislative needs of the country. The plan of having a message read in each House by the clerk or secretary was introduced by President Jefferson. Presidents Washington and Adams addressed, in person, Congress assembled in joint session. Various reasons have been alleged for this change. It is said that President Jefferson was a poor speaker, and that he regarded the formal address as monarchical.

Special sessions.

The power of calling Congress together on extraordinary occasions has been exercised by a number of Presidents. The House of Representatives has never been called in special session alone. It has become the custom for the outgoing President to call the Senate in special session to act on the nominations of the Cabinet and other officials to be appointed by his successor immediately following the inauguration.

The President and foreign ministers.

The act of receiving a minister from a foreign state is equivalent to the acknowledgment of that state as an independent nation. A minister may be rejected or dismissed because he is personally objectionable; because there is no desire to recognize his state as sovereign; or for the reason that unfriendly relations exist between the two nations. Should the executive of one nation send to the minister of another nation, during a period of strained relations, that minister's official papers, it would be regarded as equivalent to a declaration of war.

Supplementary Questions and References.

1. What have been some of the most important treaties entered into on the part of the United States?

2. For the treaty made at the close of the Spanish-American War, see Rev. of R's, 18 : 258, 371, 515, 631; 19 : 11, 261, 262, 266, 267.

3. In what ways may a treaty be abrogated? Harrison, This Country of Ours, 140, 141.

4. May a President have many of the privileges of private life?
   a. The President at Home, Harper's Mag., 89 : 196–203.
   b. Harrison, This Country of Ours, 177–180.

5. What are some of the official cares of the President?
   a. Our Fellow Citizen of the White House, Cen. Mag., 53 : 645–664.
   b. Harrison, This Country of Ours, 162–177.

6. Secure a copy of the last report of the Civil Service Commission and also Manual of Examinations for the Classified Service of the United States, Address, Civil Service Commission, Washington, D. C.
   a. How many persons are included in the civil service of the United States?
   b. What proportion of them are included in the classified service?
   c. Does the Law of 1883 seem to have brought about satisfactory results?
   d. What offices have been included in the extensions of the Civil Service Law?
   e. What is the nature of the questions given in the examinations?

7. The Fifteenth Annual Report of the Commission (pp. 443–485) contains an account of the appointments and removals by the various Presidents from 1789 to 1883. Also an account of the growth of civil service reform in the States and cities of the United States, pp. 489–502.

8. May a man be fitted for political preferment and not be competent to pass an adequate examination? Atl. Mo., 65 : 443, 444.

9. For other articles on civil service reform see: *a.* The Civil Service as a Career, Forum, 20 : 120–128. *b.* Lyman J. Gage, The Civil Service and the Merit System, Forum, 27 : 705–712. *c.* Some Popular Objections to Civil Service Reform, Atl. Mo., 65 : 433–444; 671–678. *d.* "The Victor and The Spoils," Outlook, 93 : 850–851. *e.* "Civil Service Under President Roosevelt," Rev. of R's, 31 : 317–324. *f.* "Twenty-five Years of Civil Service Reform," Outlook, 84 : 799. *g.* Roosevelt, Present Status of Civil Service Reform, Atl. Mo., 75 : 239–246. *h.* The Purpose of Civil Service Reform, Forum, 30 : 608–619.

10. What was the Tenure of Office Act of 1867? Why did it become of great importance? Is it still in force? Wilson, Division and Reunion, 267, 270–271, 297. Harrison, This Country of Ours, 101–103.

11. What were the chief points discussed in the President's last annual message?

CHAPTER XXV

THE CABINET AND THE EXECUTIVE DEPARTMENTS

The Cabinet.

THE President's Cabinet comprises the Secretary of State, Secretary of the Treasury, Secretary of War, Attorney-General, Postmaster-General, Secretary of the Navy, Secretary of the Interior, Secretary of Agriculture, and Secretary of Commerce and Labor. These constitute the chief officials in the nine executive departments of our government. It was taken for granted that such departments would be formed, for the Constitution declares the President may require the opinions in writing of the heads of the executive departments, and again, that Congress may vest the appointment of certain inferior officers in the heads of these departments. But there was no thought in the Constitutional Convention of creating an institution whose members should meet regularly with the President and consult on matters outside of their own departments. The Cabinet, as a body, has no legal position as a part of the government. The different departments have been created by acts of Congress and their duties are defined by law. The President is not obliged to take the advice of his Cabinet, although their views usually have weight with him. No official record is kept of the meetings.*

* The following is taken from a conversation with President Hayes, reported by C. E. Stevens in his Sources of the Constitution of the United States, pp. 167–168. President Hayes said that he and other Presidents had occasionally acted independently of Cabinet advice; that the custom of the past had varied; and that some Presidents had been more influenced by their Cabinets than others. He said that President Buchanan was much worried by his Cabinet because not strong enough to

Formation of the departments.

In 1789 the first Congress created the Departments of State, War, and the Treasury, also the office of Attorney-General. President Washington's Cabinet consisted of the officials whom he appointed to fill these four positions. The Navy Department was added in 1798. Prior to this time naval affairs had been under control of the War Department. While a Post-Office Department was established in 1794, the Postmaster-General was not made a member of the Cabinet until 1829. In 1849, the Interior Department was created by grouping under it certain duties which had belonged to other departments. The Department of Agriculture was organized in 1862, and to it were assigned the duties appertaining to the agricultural interests of the country which had been performed through the State Department. It was not made a Cabinet position until 1889.

In 1903, the Department of Commerce and Labor was authorized by an act of Congress. It has been advocated and it would seem desirable that a Department of Education should be formed.

Salaries and general organization of the departments.

Members of the Cabinet receive an annual salary of $12,000.* The departments furnish an example of a splendidly organized system. That the business of each department may be more easily done, it is distributed among bureaus. The bureaus are again divided into divisions, and the divisions into rooms where the large number of clerks are to be found. At the head of each bureau is a commissioner, and of each division a chief. To complete the satisfactory working of the system, each clerk is made responsible to his chief of division; this chief, to his commissioner; and he, in turn, to the secretary, who is responsible to the President and to Congress.

insist on his own will, but that President Lincoln had decided on his Emancipation Proclamation without consulting his Cabinet, and read it over to them merely for suggestion and amendment. On two occasions, he (President Hayes) decided and carried out matters against the wishes of the secretary of a department affected.

* Mr. Knox receives $8,000 owing to the fact that he was in the Senate when the increase in salary was made. See art. I, section 6, clause 2. Congress voted, in order to allow his appointment, that his salary was to be $8,000.

The Department of State

Secretary of State.

The Secretary of State is commonly called the head of the Cabinet. He is first in rank at the Cabinet table, and occupies the seat of dignity at the right of the President. Under the direction of the President, he conducts all negotiations relating to the foreign affairs of the Nation; carries on the correspondence with our representatives in other countries; and receives the representatives of foreign powers accredited to the United States, and presents them to the President. Through him, the President communicates with the Executives of the different States. He has charge of the treaties made with foreign powers, and negotiates new ones. He also has in his keeping the laws of the United States, and the great seal which he affixes to all Executive proclamations, commissions, and other official papers. He publishes the laws and resolutions of Congress, and issues and records passports. The Secretary of State has three assistant secretaries. There are seven bureaus in the department: Diplomatic, Consular, Indexes and Archives, Accounts, Trade Relations, Rolls and Library, Appointments and Citizenship.

Diplomatic Bureau.

The United States, in common with other nations, sends representatives to the foreign capitals. They are the agents through whom the Secretary of State communicates and negotiates with other powers. Such affairs are conducted through the Diplomatic Bureau. Our representatives at the courts of England, France, Germany, Russia, Italy, Austria, Mexico, Brazil, Japan, and Turkey are known as Ambassadors.* They receive a salary of $17,500 each. The social demands made upon our Ambassadors are great and they are also obliged to provide for their places of residence. The salaries paid are not sufficient to meet these necessary expenses and are small in comparison with those paid

* In 1893, Congress provided that our representative to a foreign country was to have the same rank as the representative of that country sent to the United States.

by the European nations to officers of the same rank. Thus, the English Ambassador at Washington receives a salary of $32,500. Besides the English, the Germans, the Japanese, and some other nations have provided houses for their legations. Besides Ambassadors, the other diplomatic representatives are (1) ministers plenipotentiary, envoys extraordinary, and special commissioners; (2) ministers resident, and (3) *chargés d'affaires*.

Consular Bureau.

A Consul is sent by the United States to each of the chief cities in the consular districts into which foreign countries are divided by our State Department. These Consuls, of which there are three grades, Consuls-General, Consuls, and Consular Agents, look after the commercial interests of the United States in those districts. They care for destitute American sailors and protect the interests of our citizens in foreign countries. In some of the non-Christian nations, such as China and Turkey, the Consuls also have jurisdiction over all criminal cases in which any American citizen may be a party. The importance of such a service to the country is self-evident. The appointment of these officials was formerly secured under party pressure. According to the rule adopted in 1906, all vacancies in the Consular service are hereafter to be filled by promotion for ability and efficiency in the service or by the appointment of those who have passed the civil service examination.

The Department of the Treasury

Secretary of the Treasury.

The Department of the Treasury is the most extensive and complex of the Executive Departments. In general, the Secretary of the Treasury has charge of the finances of the nation. He is required to prepare plans for the creation and improvement of the revenues and the public credit and to superintend the collection of the revenue. He gives orders for all moneys drawn from the Treasury in accordance with appropriations made by Congress, and

submits an annual report to Congress which contains an estimate of the probable receipts and expenditures of the government.

The six auditors.

It is very important that the accounts of the government should be carefully scrutinized, and one of the six auditors connected with the Treasury Department must pass upon the accounts of every public officer who pays out money. Thus the auditor for the Treasury Department examines all accounts of salaries and incidental expenses of the office of the Secretary of the Treasury and all other offices under his immediate direction, such as the Treasurer and the Assistant Treasurers, Directors of the Mint and Assay Offices. There are also auditors for the War, Interior, Navy and Post-office Departments and one for the State (and other Departments).

The Treasurer.

All of the money of the United States is under the care of the Treasurer. He receives and pays it out upon the warrant of the Secretary of the Treasury or a designated assistant, redeems the notes of the National banks, and manages the Independent Treasury System. This system renders the Treasury Department practically independent of the banks of the country. It includes the Treasury at Washington and sub-treasuries, each in charge of an Assistant Treasurer, at Boston, New York, Philadelphia, Baltimore, Cincinnati, Chicago, St. Louis, New Orleans, and San Francisco. While the greater part of the money belonging to the government is found in these places, about 200 National banks have also been designated as public depositories.

The Bureau of Engraving and Printing.

The Bureau of Engraving and Printing is one of the largest in the Department and employs about 1,600 people. It has been said that the products of this bureau, in the course of a single year, represent a sum equal in value to all the money in circulation in the United States;

for here the engraving of the plates and the printing of all the United States circulating notes, bonds, revenue stamps, and postage stamps is done.

The duties of the Comptroller of the Currency and Commissioner of Internal Revenue are discussed on pages 166 and 187.

The Life Saving Service, under a General Superintendent, is one of the most important branches of the Treasury Department. More than 2,000 men are employed in the 273 stations, located generally at danger points on the oceans and the great lakes. Out of the 6,000 lives imperilled in the year 1910 in the disasters on water, only 53 were lost. Of the 1,463 vessels of all kinds in peril, 1,407, with cargoes valued at over $10,000,000, were rendered assistance by the life-savers. This service is maintained at an annual expenditure of a little over $2,000,000. It has been estimated that 225,000 lives have been saved through this service since it was founded in 1848. The Life Saving Service.

The Supervising Surgeon-General superintends the twenty-two marine hospitals where our sick sailors are cared for; conducts the quarantine service of the United States; and directs the laboratories for the investigation of the causes of contagious diseases. Supervising Surgeon-General.

The Supervising Architect prepares the plans for government buildings and superintends their construction. Supervising Architect.

Military and Naval Affairs

The President has never assumed command of the army in person, but has delegated his authority to officers whom he selects. The Secretary of War and Secretary of the Navy exercise this authority during the time of war. They, in turn, select other officers to assist them. The orders given by the President to any officer are strictly imperative.

Secretary of War.

The Secretary of War has charge of the military affairs of the government under the direction of the President. He supervises all estimates of appropriations for the expenses of the department, for the purchase of all supplies for the army, and for its transportation. He has under his supervision the military academy at West Point; and all the National cemeteries. He has the oversight also of river and harbor improvements; and of the prevention of obstruction to navigation. All chiefs of the eleven bureaus are regular army officers.

Commissary-General.

Food is supplied the army by order of the Commissary-General, and medicine by order of the Surgeon-General; and arms are supplied by the Chief of Ordnance. The arms used are manufactured chiefly in the United States arsenals, which are under the control of the War Department. The arsenals at Springfield, Massachusetts, and Rock Island, Illinois, manufacture rifles and carbines; and that at West Troy, New York, cannon and mortars.

Chief of Ordnance.

Corps of Engineers.

The Corps of Engineers is in charge of the Chief of Engineers. The duties of these officials are to locate and construct fortifications, military bridges, and light-houses; and to carry on the work of the government for the improvement of harbors and navigable rivers.

Chief Signal Officer.

The Chief Signal Officer supervises all military signalling, such as communicating messages from distant points by the use of flags, the heliograph, flashlights, and similar devices. He is also charged with the supervision of the construction and operation of all military telegraph lines.

The United States military academy.

The United States military academy at West Point was founded in 1802. The corps of cadets is made up of one cadet from each of the Congressional districts, one from each of the Territories and the District of Columbia, and one hundred from the United States at large. Prior to the year 1900 there were only ten cadets at large. The act of that year also provided that thirty

cadets were to be named by the President directly, and the remainder apportioned among the States. They all receive their appointments from the President, but it has become the custom for the Representatives and Delegates to select those from the Congressional districts and the Territories. An appointment may be made after a competitive examination, which is the usual way, or without such a test, according to the wishes of the Representative. The cadet must be between seventeen and twenty-two years of age. Each receives $540 a year during the four years of his course. The course of study has for the principal subjects: mathematics, French, Spanish, drawing, tactics, physics, chemistry, geology, history, international and constitutional law, civil and military engineering, and the science of war. Upon graduation, the cadets are commissioned as second lieutenants in the United States army. In case there are more graduates than vacancies, those in excess are honorably discharged with the payment of one year's salary.

The Department of the Navy

Secretary of the Navy.

The duties of the Secretary of the Navy pertain to the construction, manning, arming, equipping, and employment of war-vessels. The work is distributed among the following bureaus: navigation, yards and docks, equipment, ordnance, construction and repair, steam engineering, medicine and surgery, supplies and accounts. The chiefs of these bureaus are officers of the United States navy.

The United States naval academy.

The naval observatory at Washington is under the direction of the Secretary of the Navy; also the naval academy at Annapolis, established in 1846. One cadet is allowed in the naval academy for each member or delegate of the House of Representatives, one for the District of Columbia, and ten at large. Candidates for admission, at the time of their examination, must be between the ages of fifteen and twenty years. The nomination of a candidate to fill a vacancy is made upon recommendation of a Representative or Delegate, if made before July 1; but if no recommendation be made by that time, the Secretary of the Navy fills the vacancy by appointing an actual resident of the

district in which the vacancy exists. The President selects the candidates at large and the cadet for the District of Columbia. At the conclusion of the six years' course, two of which are spent at sea, the graduates are assigned in order of merit to the vacancies that may have occurred in the lower grades of the line of the navy and of the marine corps. Cadets who are not assigned to service after graduation are honorably discharged and are given $500, the amount they have received each year of their course at the academy.

The Department of Justice

Attorney-General.

The Attorney-General is the legal adviser of the President and of the heads of the departments. He supervises the work of all the United States District Attorneys and Marshals, and is assisted by the Solicitor-General. Unless otherwise directed, all cases before the Supreme Court and the Court of Claims in which the United States is a party are argued by the Attorney-General and the Solicitor-General. The law officers of the various departments are also under the direction and control of the Attorney-General.

The Post-Office Department

Postmaster-General.

The Postmaster-General is at the head of this department. He appoints all of the officers of the department, with the exception of the four Assistant Postmasters-General and 6,900 Postmasters, whose salaries are not less than $1,000 and whose appointments are made by the President with the consent of the Senate. The Postmaster-General may, with the consent of the President, let contracts and make postal treaties with foreign governments.

Universal Postal Union.

Since 1891, the United States has been a member of the Universal Postal Union. By this Union over fifty distinct powers became parties to an agreement by which uniform rates of post-

age were agreed upon and every facility for carrying mails in each country was extended to all the others.

Bureaus of the Post-Office Department.

There are four bureaus in the department, each in charge of an Assistant Postmaster-General. The appointment of postmasters; general management of the post-offices with their clerks and carriers is under the direction of the first Assistant. The second Assistant looks after the transportation of the mails; the third Assistant furnishes stamps and has charge of the finances; while the fourth Assistant among other duties superintends the divisions of rural delivery and dead letters.

The Department of the Interior

The Secretary of the Interior.

The Interior Department, under the supervision of the Secretary of the Interior, is one of the most complex and important of the departments. There are two Assistant Secretaries in the department, while at the head of the other offices are six Commissioners and two Directors.

Commissioner of the General Land Office.

The Commissioner of the General Land Office has charge of all the public lands of the government, and supervises the surveys, sales, and issuing of titles to this property. (See p. 283.)

Commissioner of Education.

The Commissioner of Education is the chief of the Bureau of Education. This bureau has charge of the collection of facts and statistics relating to the educational systems and to progress along educational lines in the several States and Territories, and also in foreign countries. The reports issued by the bureau are of great value to those interested in education. The Commissioner has advisory power only, except in Alaska. Here, he directs the management of the schools.

Commissioner of Pensions.

The Commissioner of Pensions supervises the examination and adjustment of all claims arising under the laws of Congress granting bounty land or pensions on account

of services in the army or navy during the time of war. That our government has not been ungrateful may be gathered from the report of the Commissioner for 1908. There were in that year 1,000,000 pensioners, to whom were paid approximately $155,000,000.

Commissioner of Indian Affairs.

Prior to 1871 the Indian tribes were treated as independent nations by the United States, but by a law of that year the general government was made the guardian of their interests. The Commissioner of Indian Affairs exercises a protecting care over these "wards" by directing the work of the Indian agents and of the superintendents of Indian schools.

Indian reservations.

There are some 300,000 Indians on the 150 reservations which are situated in the various States and Territories. The lands of these reservations are held in common; that is, the ownership is tribal rather than individual. It is the policy of the government, however, to bring about the allotment of lands "in severalty," and thus to encourage the Indians to adopt an agricultural life. The Indians are only partially self-supporting. Some tribes derive an income from funds which are the proceeds derived from the sales and cessions of their lands. The National government holds this money in trust for them, and, by direct appropriation, supplies the money, food, and clothing necessary to complete their support. The expenditures for the needs of the Indians in 1902 were $9,736,186. Over one-fourth of this sum was spent in their education in Indian schools, numbering nearly 300, which are under the direct control of the department.

Director of the Geological Survey.

The Director of the Geological Survey has gathered much valuable information through the examination of the geological structure, mineral resources, and mineral products of the United States. He has charge, also, of the survey of the forest reserves.

The Department of Agriculture

Secretary of Agriculture

The duties of the Secretary of Agriculture are: "To acquire and diffuse among the people of the United States useful information on subjects connected with agriculture in the most comprehensive sense of that word." The activities of the department are along many lines, as indicated by the names of the bureaus and divisions.

Bureau of Animal Industry.

One of its most important services is performed in the Bureau of Animal Industry, which inspects the greater part of the meat products exported to European countries. The law providing for this inspection was necessary because of the claim in European markets that diseased meats were shipped from the United States. An inspection is also provided for live animals intended for exportation and of animals imported. Much scientific work is also devoted to the study of the various diseases of animals.

Division of Vegetable Physiology

In like manner, the Division of Vegetable Physiology and Pathology is engaged in the study of diseases affecting trees, and that of Entomology in the investigation of injurious insects.

New bureaus.

Continuous advancement is being made by the government toward placing the agricultural pursuits upon a more scientific basis. Thus, Congress, in 1901, recognized the value of the work done by changing the Divisions of Forestry, of Chemistry, and of Soils into bureaus. A Bureau of Plant Industry was also formed.

Division of Seeds.

Over $100,000 are expended each year by the Division of Seeds in the purchase of "rare and valuable" seeds, bulbs, and plants. These are distributed free throughout the country for the purpose of fostering the introduction of new and more valuable crops.

Public Road Inquiries.

Another important interest is carried on by the Office of Public Road Inquiries. Here experiments are made

with regard to the best system of road-making and the best materials to be used for that purpose.

Weather Bureau.

Through the Weather Bureau daily forecasts and warnings of storms are sent to over 50,000 different points; and storm signals are displayed at 300 places on our coasts. By its operation, millions of dollars are saved each year to the agricultural and maritime interests of the country. A recent decree of the Post-Office Department renders the reports of the bureau of still greater service. Slips of paper having the storm, frost, or other warnings printed on them are to be distributed by the rural mail carriers at the various houses in the districts affected.

The Department of Commerce and Labor

Secretary of Commerce and Labor.

Because of the nature of the subjects assigned to this new department, it will rapidly become one of the most important of the departments. At its head is a Secretary. Strictly speaking, there have been only two bureaus created for the department, the others having been transferred from the other departments. The new bureaus are those of Corporations and of Manufactures. The Commissioner of Corporations is expected to investigate the organization, conduct, and management of the business of corporations and other combinations engaged in interstate commerce, and to see that all anti-trust laws enacted by Congress are enforced. The duties of the Commissioner of Manufactures, as defined by the law, are "to foster, promote, and develop the various manufacturing industries of the United States and markets for the same at home and abroad by gathering, compiling, publishing, and supplying all available and useful information concerning such industries and such markets, and by such other methods and means as may be prescribed by the Secretary or provided by law."

The President is given the power to transfer to the department those bureaus in other departments which are engaged in scientific or statistical work, the Interstate Commerce Commission and the scientific divisions of the Agricultural Department being excepted. The offices which have been transferred are as follows: the Bureau of Statistics; Census and Immigration Bureaus; Bureau of Foreign Commerce of the State Department; the Bureau of Standards of Weights and Measures; Bureau of Navigation and the Shipping Commissioners; the Steamboat Inspection Service; Fish Commission; Coast and Geodetic Survey; and Lighthouse Board.

The Chief of the Bureau of Statistics collects and publishes the annual statistics on commerce.* These reports are of such a character that they are invaluable to the President in the preparation of his messages; and they are used extensively by the Heads of Departments, members of Congress, and the public. Tariff laws, special legislation for particular industries, and all international trade treaties are also based on these compilations. The greatest demand is for the Annual Statistical Abstract, which presents in a condensed form the history of the commerce of the United States for a number of preceding years.

The Chief of the Bureau of Statistics.

The Commissioner of Immigration superintends the work done by the inspectors of immigrants.† Every immigrant must undergo a rigid examination in order to de-

The Commissioner of Immigration.

* Monthly reports are made by our Consuls on improvements in agricultural and manufacturing processes. These reports also give information regarding good markets for our products and of the best markets in which to purchase foreign products. Among scores of similar subjects, our Consuls reported during one year on the following: Agricultural Machines in Russia; American Apples in France; American Boots and Shoes in New Zealand; Radium Industry; Wages and Cost of Living in Germany.

† During the year ending June 30, 1910, there arrived in the United States 1,041,570 immigrant aliens. This was an excess of 289,784 over the preceding year; 191,049 could neither read nor write; 223,453 were Italians; 128,348 were Polish; and the other chief nationalities in order of numbers were Hebrew, German, English, Scandinavian; 24,270 were denied admission at the ports: 15,927 of these were thought likely to become a public charge; 3,033 had some communicable disease; and 1,786 were contract laborers.

termine whether he belongs to any of the prohibited classes. (See page 175.) It is also ascertained whether he is able to read and write and whether he has $50, or, if less, how much; 86 per cent. of all the aliens coming in 1910 had less than $50 each. Each immigrant pays a tax of four dollars, which sum is used to partially defray the expenses of the bureau.

Additional commissions and boards.

There have also been created at different times commissions and boards having executive functions, but which are not connected with any of the departments. They are as follows: the Civil Service Commission, described on p. 238; the Interstate Commerce Commission, described on p. 177; the Board on Geographic Names, and the Industrial Commission. Special officials and boards are in charge of the National Museum, the Bureau of Ethnology, the Library of Congress, the Government Printing Office, and the Smithsonian Institution. The Government Printing Office was established in 1861. Facilities for publishing the Congressional debates, reports of the executive departments, etc., have been greatly multiplied from year to year. Some 15,000 copies of the President's annual message and 12,000 copies of the abridgment of the message, 40,000 copies of the report of the Commissioner of Education, 54,000 of the Congressional Directory, and other reports in similar quantities are printed each year for free distribution. A large extension of the Government Printing Office was authorized in 1900 and $2,429,000 were appropriated for that purpose. It is said that this extension will constitute it the largest and best equipped printing establishment in the world.

In 1829, James Smithson, an English scientist, gave some $500,000 to the United States for the purpose of founding at Washington, "an establishment for the increase and diffusion of knowledge among men." The Smithsonian Institution is notable because of its Museum, which offers scientists such excellent opportunities for original investigation.

Supplementary Questions and References

1. Does the President select the members of his Cabinet from among former members of Congress? Would this be desirable?

2. Have the members of the Cabinet ever been allowed to appear before Congress in the interests of their own departments? Would this be desirable? Wilson, Congressional Government, 257; Walker, The Making of the Nation, 92; Bryce, American Commonwealth, I, chapter 9; Atl. Mo., 65 : 771–772.

3. Who are now the heads of the executive departments? Were they prominent in National affairs before they were selected for these positions?

4. What reasons can you give for the belief that other departments should be added to the Cabinet?

5. Give a list of the Presidents who have been Secretaries of State. How do you account for this policy in the first years of our government, and not at a later time? Name some of the other prominent Secretaries of State.

6. Who are our Ambassadors? Can you give the name of any foreign Ambassadors in Washington? See Congressional Directory.

7. The methods by which our ministers are selected, take possession of their offices, and are presented at foreign courts are described in Curtis, The United States and Foreign Powers, 15–21.

8. The duties of ministers. Curtis, The United States and Foreign Powers, 22–26.

9. Ought our Ambassadors to be changed every four years? Our Need of a Permanent Diplomatic Service, Forum, 25 : 702–711.

10. Are our Ambassadors given adequate salaries? Diplomatic Pay and Clothes, Forum, 27 : 24-32; Curtis, The United States and Foreign Powers, 13-14.

11. From a consular report learn what the duties of a Consul are. Curtis, The United States and Foreign Powers, 30–33.

12. What is the Great Seal of the United States, and what is its use? Harrison, This Country of Ours, 199–200.

13. What is the particular work of the Marine Department;

of the Steam-boat Inspection Service; of the Marine Hospital? Lyman J. Gage, Organization of the Treasury Department, Cosmop., 25 : 355–365.

14. What is the work of the Bureau of Engraving and Printing? Spofford, The Government as a Great Publisher, Forum, 19 : 338–349.

15. What is the extent of our Merchant Marine? Should it be increased? Statistical Abstract of the United States, 1900, 437–450.

16. From the last report of the Bureau of Statistics find answers for the following: The expenditures of the government in the different departments; in what branches there was a large increase in 1899; value of merchandise imported and exported; amounts of corn, wheat, cotton, wool, and iron produced, imported, and exported; the chief nationalities of immigrants, and comparison of the total number with previous years.

17. Are our coasts well defended? Harrison, This Country of Ours, 225.

18. For illustrated articles on Education at West Point and Annapolis, see Outlook, 59 : 825–837; 839–849.

19. How does the amount of money paid for pensions by the United States compare with that of other nations? Forum, 12 : 645–651.

20. Has the pension policy of our government been a wise one? N. Am. Rev., 153 : 205–214; 156 : 416–431; 618–630; Cen. Mag., 42 : 179–188; 790–792; 46 : 135–140; Forum, 12 : 423–432; 15 : 377–386; 439–451; 522–540.

21. For accounts of the new Congressional Library, see Cen. Mag., 53 : 682–711; Atl. Mo., 85 : 145–158; Cosmop., 23 : 10–20.

CHAPTER XXVI

THE JUDICIARY

Lack of a judiciary under the Confederation. The Federalist, No. 22.

ALEXANDER HAMILTON characterized the lack of a judiciary as the crowning defect of government under the Confederation. "Laws," he wrote, "are a dead letter without courts to expound and define their true meaning and operation." Judicial powers were vested in the Continental Congress or in the agents of that body. The conviction that the Federal Judiciary should constitute one of three independent parts of the government was general in the Constitutional Convention, and after a brief discussion, this was provided for as follows:

Article III, section 1.

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

Judiciary act of 1789.

Congress carried out the provisions of this section by passing the judiciary act of 1789. This act provided that the Supreme Court should consist of a Chief Justice and five Associates. District Courts and Circuit Courts were also created by it and their functions as inferior courts were defined.

The Supreme Court.

The Supreme Court, at present, consists of the Chief Justice and eight Associate Justices. It holds one session annually, at Washington, beginning on the second Monday in October and continuing until about May 1.

Circuit Courts of Appeals.

By the law of 1891, nine Circuit Courts of Appeals were established for each of which a Circuit Judge was provided. The Circuit Courts of Appeals consist of three judges each, any two constituting a quorum. The judges eligible to sit in one of these courts are: the Supreme Court Judge assigned to the Circuit, the Circuit Judges, and the District Judges of that circuit.

District Courts.

The territory of the United States has been divided into judicial districts, none of them crossing State lines and each having a District Court.

Congressional Directory, 1911.

New York and Texas have each four districts; Alabama, Pennsylvania, and Tennessee three each; Arkansas, California, Florida, Georgia, Illinois, Iowa, Kentucky, Louisiana, Mississippi, Michigan, Missouri, North Carolina, Ohio, Oklahoma, Virginia, Washington, Wisconsin, and West Virginia two each; and the remaining States have each a single district. New Mexico constitutes a district, likewise Alaska, Arizona, and Hawaii. Generally there is a judge for each district, but a single judge is at times assigned to two districts.

United States District Attorneys and Marshals.

A District Attorney and Marshal are appointed by the President for each District. The United States District Attorney is required to prosecute all persons accused of the violation of Federal law and to appear as defendant in cases brought against the government of the United States in his district. The United States Marshals, in general, perform duties connected with the enforcement of the Federal laws which resemble the duties of sheriffs under State laws.

Circuit Courts.

Established by the act of 1789, each Circuit Court was, at first, presided over by a Justice of the Supreme Court and a District Judge. The policy was to have as many Circuit Courts as there were Justices of the Supreme Court. It was not until 1869 that a Circuit Judge was provided for each of the nine circuits. By an act of 1911, in response to the agitation for a simplified Federal judicial system and greater expedition in the hearing of cases,

the Circuit Courts were abandoned, judges of these courts were transferred to the Circuit Courts of Appeals.

Court of Claims.

The Court of Claims was established in 1855 and consists of a Chief Justice and four Associates. It holds an annual session in Washington.

Terms and salaries of Judges.

That the Judiciary should be independent of parties and of other influences cannot be questioned. Hence the wisdom of the provision that United States Judges shall hold their offices during good behavior and shall receive a compensation for their services which shall not be diminished during their continuance in office. The Constitution states that Judges of the Supreme Court shall be appointed by the President with the consent of the Senate. It has been interpreted that the Judges of the inferior courts are to receive their appointments in like manner.

By an act of Congress of 1911, the salary of the Chief Justice was fixed at $15,000 per annum; that of Associate Justices, $14,500; and District Judges, $6,000. There is an allowance for expenses of judges not to exceed $10 a day. Any Judge who has reached the age of seventy years, and has served ten years, may retire on full pay for life.

We are next to consider the jurisdiction of the several courts that have been described.

Section 2, clause 1.

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting Ambassadors, other public ministers and Consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more States;—between a State and citizens of another State;—between citizens of different States;—between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens or subjects.

Section 2, clause 2.

In all cases affecting Ambassadors, other public ministers and Consuls, and those in which a State shall be party,

the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

Speaking of the position of the Supreme Court in our judicial system, Mr. Bryce says:

Bryce, American Commonwealth, I, 237–240.

"No feature of the government of the United States has awakened so much curiosity in the European mind, caused so much discussion, received so much admiration and been more frequently misunderstood, than the duties assigned to the Supreme Court and the functions which it discharges in guarding the ark of the Constitution."

Extent of the judicial power.

A careful consideration of clause 1 of this section shows the wide extent of the powers of the United States Courts. It shows too the desirability of having all such cases under their jurisdiction rather than under the authority of the State courts. This jurisdiction applies to two classes of cases. One class has to do with the nature of the questions involved, as in all those cases arising out of the Constitution, laws, and treaties of the United States, and admiralty and maritime cases. The other class of cases arises because of the parties to the suits, as, Ambassadors, Consuls, two or more States, citizens of different States, etc.

State as plaintiff. The Federalist, 81.

The provisions here made, that the judicial power shall extend to controversies between a State and citizens of another State, and between a State and the citizens or subjects of a foreign state, were doubtless intended to apply only to suits in which a State should attempt, as plaintiff, to secure justice in a Federal Court. But, contrary to expectation, suits were early brought *against* some of the States by citizens of other States to enforce the payment of debts and other claims. In the notable case of Chisholm *vs.* Georgia in 1793, Chisholm, a citizen of North Carolina, began action against the State of Georgia in the Supreme Court of the United States. That court interpreted the clause as applying to cases in which a State is defendant, as well

as to those in which it is plaintiff. The decision was received with disfavor by the States, and Congress proposed the XIth Amendment to the Constitution, which was ratified in 1798 and reads as follows:

Amendment XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another State, or by citizens or subjects of any foreign state.

Original and appellate jurisdiction

The Supreme Court has original jurisdiction in "all cases affecting Ambassadors, other public ministers, and Consuls, and those in which a State shall be a party." By original jurisdiction is meant that these cases may be begun in the Supreme Court. Other cases come to the Supreme Court from the inferior United States Courts or from the Supreme Courts of the States and Territories by appeal or by writ of error.* In these cases the Supreme Court is said to have appellate jurisdiction.

It is difficult in brief space to define minutely the province of each court. The following accounts, therefore, give only a general description.

Jurisdiction of inferior courts. Circuit Courts of Appeals. 26 Statutes at Large, 828.

The Circuit Courts of Appeals are given final jurisdiction in certain cases appealed to them from the District, such as those arising under the patent, revenue, and criminal laws, as well as admiralty and other cases in which the opposing parties to a suit are an alien and a citizen, or are citizens of different States. The Supreme Court has thus been partially relieved from an over-crowded docket. But jurisdiction in these cases may be assumed by the Supreme Court if it desires to do so.

District Courts.

The jurisdiction of the District Courts embraces criminal cases, admiralty cases, bankruptcy proceedings, suits for penalties, and the like. The jurisdiction of cases formerly in the Circuit Courts was transferred to the District Courts when the Circuit Courts were discontinued. These courts had original jurisdic-

* A writ of error is defined to be "a process which removes the record of one court to the possession of another court, and enables the latter to inspect the proceedings, and give such judgment as its own opinion of the law and justice of the case may warrant."

tion in patent and copyright cases; in cases brought by the United States against national banks; and in ordinary civil actions, where the amount involved, exclusive of interest and costs, was at least $2,000. Where the amount is less, the case must be tried in a State court.

Court of Claims. 10 Statutes at Large, 612.

The Court of Claims is composed of a Chief Justice and four Associate Justices. Claims against the Federal government, pension claims excepted, are heard by this court. The judgments of the Court are referred to Congress and appropriations are made to cover them.

Territorial Courts.

The Courts of the District of Columbia and of the Territories are under the control of Congress, but are not Federal Courts. Judges of these courts are appointed in the same manner as other United States Judges, but their appointment is only for a term of four years.

The right of jury trial.

The right of trial by jury in all criminal cases had been insisted upon by Englishmen for centuries prior to the formation of our Constitution. There were two branches to the system, the grand and the petit juries. Each performed the same duties as they do now. The Constitution provides that

Section 2, clause 3.

The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crime shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

This clause was attacked by the opponents of the Constitution in the State conventions. It was believed that the Constitution did not furnish adequate safeguards against unjust prosecutions. Because of this agitation, Congress, in its first session, proposed the following Amendments, which were duly ratified by the several States:

Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or idictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be sub-

ject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime may have been commmitted, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

Amendment VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Infamous crimes. Cooley, Principles of Constitutional Law, 291.

Authorities have had difficulty in giving an exact definition of an infamous crime. That given by Judge Cooley is the most satisfactory. He says: "But the punishment of the penitentiary must always be deemed infamous, and so must any punishment that involves the loss of civil or political privileges."

Grand Jury.

A grand jury consists of from twelve to twenty-three men. "They are sworn to inquire and present all offences committed against the authority of the National government within the State or district for which they are impanelled, or elsewhere within the jurisdiction of the National government. They sit in secret and no accusation can be made by them without the concurrence of at least twelve. After hearing the evidence, if the grand jury

concludes that the accusation is not true they write on the back of the bill, "not a true bill" or "not found." The accused, if held in custody, is then given his freedom, but he may again be indicted by another grand jury. If the grand jury decides that the accusation is true they then write on the back of the bill, "a true bill" or "found." The indicted person must be held to answer the charges made against him.*

Rights of the accused.

The accused must be given a public and speedy trial before an impartial jury, known as the petit jury, consisting of twelve men from the district wherein the crime was committed. The decision must be unanimous before a verdict can be rendered. The accused is given a copy of the indictment in which the nature of the accusation is clearly set forth and is granted time in which to prepare for his defence. Equally just and significant are the provisions that he shall be confronted by the witnesses against him; may compel the attendance of witnesses in his favor; and may employ counsel for his defence. In case he is not able to pay for his own counsel the judge appoints one whose services are paid for out of the public treasury. If the verdict has been rendered by a jury and the judgment pronounced, the accused cannot be again brought to trial on the same charge.

Right of eminent domain.

The right of "eminent domain" is properly vested in the government. By this right private property may be taken for public uses after the payment of a just price. The rights guaranteed the accused by these Amendments are chiefly derived from the principles of the common law. (See p. 95.)

Treason under the common law.

Treason has always been regarded as one of the worst of offences and is punished by the severest penalties. Under the early common law, it rested with the judges to declare what acts

* For the grand jury system of some States and definition of *indictment* and *presentment*, consult p. 63.

were treasonable. Judges became mere tools in the hands of despotic rulers and were induced to declare certain conduct treasonable which had not previously been so regarded. In the time of Edward III, the English Parliament attempted to prohibit these abuses by giving a definition of treason. The substance of two of the five articles of this statute were made a part of our Constitution in the following:

Article III, section 3, clause 1. Definition of treason

Treason against the United States shall consist only in levying war against them or in adhering to their enemies, giving them aid or comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Section 3, clause 2.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted.

Who are traitors.

Parties to a conspiracy cannot be considered traitors until they have actually assembled men for the carrying out by force of some treasonable purpose. "All persons who then perform any act, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered traitors. And one is adherent to the enemies of the country, and giving them aid and comfort, when he supplies them with intelligence, furnishes them with provisions or arms, treacherously surrenders to them a fortress and the like."

Cooley, Principles of Constitutional Law, 288.

Supplementary Questions and References

1. What are the names of the members of the Supreme Court at present? See Congressional Directory.

2. How large is the district in which your home is located? Who are the judges? See Congressional Directory.

3. Under what conditions may a case be appealed from the Supreme Court of the State to the United States Supreme Court? Bryce, American Commonwealth, I, 232–234.

4. How is the fact, that conflicts between the authority of the Federal and the State Courts do not arise, accounted for? Bryce, I, 238.

5. Are the United States Courts influenced in their decisions by politics? Bryce, I, 265–267.

6. Describe the influence of John Marshall as Chief Justice.

a. John Marshall, American Statesman Series, chapters 10 and 11.

b. Bryce, I, 267.

c. Lodge, John Marshall, Statesman, N. Am. Rev., 172 : 191–204.

d. John Marshall, Atl. Mo., 87 : 328-341.

7. Show how the development of our Constitution by interpretation has been brought about. Bryce, I, 376–385.

CHAPTER XXVII

RELATIONS BETWEEN THE STATES AND BETWEEN FEDERAL GOVERNMENT AND THE STATES

Article IV, section 1.

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section 2, clause 1.

The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.

Section 2, clause 2.

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

Section 2, clause 3.

No person held to service or labor in one State, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

State records.

The Constitution was intended to form a more complete bond between the States. This union would be weakened and give rise to endless litigation and injustice were the legislative acts, records, and proceedings of the courts of one State not given the same credit in every State as in that where they originated. Legislative acts are made authentic by having the State seal affixed. The record of a court is "proved" through the signature of the clerk and judge and affixing of the seal of the court where there is one.

Fugitive criminals.

Extradition is the delivering up to justice of fugitive criminals by the authorities of one State or country to those of another. The necessity for such a regulation is evident, for a criminal from justice might easily escape into a neighboring State. "The responsibility of determining whether the person demanded is a fugitive from the justice of the demanding State rests with the Executive of the State or Territory in which the accused is found. The case of the demanding State should be presented in some official form; either by official copy of an indictment, or by a complaint under oath. The right to demand surrender and the obligation to comply with the demand extend to all crimes and offences made punishable by the laws of the State where the offence was committed; but if the Governor of the State in which the accused is found refuses to surrender him he cannot, through the judiciary, be compelled to deliver him up." The privilege of extradition between nations is secured by treaty relations.

Justice Miller on the Constitution, 637, 638.

Section 4. Protection of the States by the National government.

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

It was natural that the Constitution should guarantee to the States the form of government with which the framers of that instrument were most familiar and which would be most in keeping with the Federal union they hoped to see established.

Protection against invasion.

Any protection afforded a State against invasion signifies the protection of the Nation. Since the States are forbidden to keep troops and ships of war in time of peace, they must, if invaded, be dependent upon the general government. In such a case the President has been authorized by law to use the army and navy of the United

States, or call the militia into service, to furnish the needed protection, even if the State has not applied for aid.

Protection against domestic violence.

Each State is supposed to possess the power of enforcing its own laws, and is of right protected in the exercise of this prerogative. In case of an insurrection, the State militia is sent by order of the Governor to suppress it. But should they fail to restore order, the legislature, or the executive (when the legislature cannot be convened), applies to the President for military aid. If the uprising has interfered in any way with the carrying out of the laws of the Nation, the President may, at his discretion, send troops to suppress it without having been asked to do so by the legislature or the Governor. There was a notable illustration of this point during the time of the Chicago riots, in July, 1894.*

* See American History, p. 493.

CHAPTER XXVIII

TERRITORIES AND PUBLIC LANDS

The Northwest Territory.

When the Constitution was adopted, the National government possessed a vast tract of land lying north of the Ohio River and extending to the Great Lakes and the Mississippi River.* This region had been owned by several of the original States (*viz.*, Massachusetts, Connecticut, New York, and Virginia); but their claims were conflicting and each finally agreed to cede its portion to the general government. This occurred during the period of the Confederacy. Although entirely without legal authority to do so under the Articles of Confederation, Congress established a Territorial government for the "Territory of the United States lying north and west of the Ohio River," by the enactment of the Ordinance of 1787. The first Congress under the Constitution re-enacted this Ordinance, and thus entered at once upon the government that it has since maintained over the Territories of the United States. Congress exercises this power by virtue of the authority expressly delegated to it in the following clause.

The power to govern Territories.

Article IV, section 3, clause 2.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

First the Northwest Territory, and later the various parts of it (Ohio, Indiana, etc.), were governed as Ter-

* For a fuller treatment of the topics that follow, see American History, 184–190.

ritories; afterwards, when the Louisiana purchase, the Mexican cession, and the Oregon region were acquired, Territories were organized there. The Territorial form of government was an intermediate stage preparatory to the admission of new regions as States.

Territorial form of government.

The government of Hawaii corresponds in most respects to that which existed almost since the foundation of the government in the continental Territories. The executive is a governor appointed for four years by the President, who also appoints a Secretary. The administrative officers —Treasurer, Auditor, Attorney-General, Superintendent of Instruction, and others—are appointed by the Governor and Senate of Hawaii. The judiciary consists of judges appointed by the President. The Territorial legislature has two houses, the Senate and the House of Representatives, the members of which are elected, from districts, by popular vote. The legislature resembles a State legislature in its control of Territorial affairs; but its laws may be modified or entirely annulled by Congress. In this way Congress maintains its complete authority over the internal policy of the Territory. The people have no voice in National affairs, but they elect a delegate to Congress, who may debate but not vote.

Alaska.

Alaska is regarded as an "unorganized territory." The executive officers are the Governor, Attorney-General, and Surveyor-General, the last acting as Secretary of the Territory. The judiciary consists of three district judges. All these officers are appointed by the President and Senate. There is no legislature. Congress enacted, in 1900, a complete code of civil laws for Alaska.

Porto Rico.

In the government of Porto Rico, the President appoints the governor and administrative officers. The lower house of the legislature is elected, while a part of the members of the upper house are elected and a part are appointed by the President.

The Philippines.

The government of the Philippine Islands resembles that of Porto Rico. There is a Commission of nine members: the Governor, four heads of departments, (Americans) and four Fili-

pinos. All are appointed by the President, with the consent of the Senate. This Commission constitutes the upper house of the legislative body; the lower house or assembly is elected from certain districts of the Islands where the people are considered capable of political action. Qualifications for voting include both property and literary tests, either English or Spanish being accepted in the latter case.

The entire group of islands is divided into provinces. In some of these the people exercise local self-government; in others there is military government under the United States army. In many cities the government is similar to that in American cities.

The United States owns scattered islands, Tutuila of the Samoan group,* Guam, Midway, Wake, and others, which have no regularly organized governments.

The Panama Canal Zone. The Panama Canal Zone † is governed by the Isthmian Canal Commission, consisting of seven men appointed by the President. The Commission has charge of the construction of the canal, and to one of the Commissioners is given the duty of governing the Zone. The Commission is subordinate to the Department of War at Washington.

Cuba. Cuba is not a possession of the United States but may be regarded as a dependency. Our government is given the right (by treaty with Cuba) to take control of Cuban affairs under certain circumstances, as when foreign troubles, disorder in Cuba, or financial difficulties make it necessary. This was done in the years 1906–1909. Cuba is a Republic in government.

The power to acquire territory. By what authority has the United States acquired the territory that was not in its possession in 1789? This question, arising for the first time in connection with the Louisiana purchase, was of vital importance. It has been argued that section 3 of Article IV applies only to the territory belonging to the United States at the time of the adoption of the Constitution; and that, consequently, acquisitions were made not by virtue of any power delegated to the United States in the Constitution, but rather by virtue of the fact that the United States is a nation,

* See American History, 504. † *Ibid.*, 516.

and so entitled to exercise this sovereign power as any other nation might. But it is not necessary to make this contention. There is the highest authority, the Supreme Court speaking through its greatest Chief Justice, for holding a different view. This is found in a decision of Chief Justice Marshall, who said, "The Constitution confers absolutely on the government of the Union the powers of making war and of making treaties; consequently, that government possesses the power of acquiring territory, either by conquest or by treaty."

The power of Congress in governing Territories and possessions.

The circumstances attending the acquisition of Porto Rico and the Philippines, and the peculiar character of their inhabitants, gave rise to grave Constitutional problems concerning their government by the United States. Similar questions had previously arisen in relation to the government of the Territories, especially questions involving the power of Congress over slavery.* After the Spanish war the power of the Federal government in the new acquisitions was determined by a series of decisions rendered by the Supreme Court in the "Insular Cases." In brief, the court decided that our Territories and possessions "belong to" but are not a "part of" the United States. Their inhabitants are not citizens of the United States until made so by act of Congress. Congress is unrestricted in its power of legislating for the Territories and possessions by provisions of the Constitution. For example, the provision that all duties shall be uniform throughout the United States does not apply to the insular possessions. Tariffs have been levied against goods coming into the United States from them. So Congress has practically a free hand in determining what laws and forms of government are best adapted to the people of our possessions. Its policy so far has been to allow self-government to the extent that the people seemed ready for it.

* See American History, 333, 360, 362.

The admission of Territories to statehood.

We have so far considered the Territories as in a state of greater or less dependence upon the National government. Under what conditions and in what way may these relations be changed? The admission of Territories into the Union as States was contemplated before the adoption of the Constitution, for the Ordinance of 1787 provided that the Northwest Territory should be divided into States, and these were guaranteed admission into the Union. Doubtless, the framers of the Constitution regarded statehood as the ultimate destiny of all territory then belonging to the United States. This idea became the policy of the government in its treatment of the Louisiana purchase and the Mexican cession. In the case of Alaska, and especially since the addition of the insular possessions, questions have arisen regarding the policy that is to be pursued. Are Hawaii, Porto Rico, and the Philippines ever to be erected into States? Or, are they ultimately to be granted their independence, if they desire it?

That the power to admit States belongs exclusively to Congress is evident from the language of the Constitution.

Article IV, section 3, clause 1.

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor shall any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned, as well as of the Congress.

The power of Congress.

A Territory cannot claim admission as a Constitutional right if Congress finds obstacles that seem to it insuperable. Nor is there any rule as to the population that a Territory should have before admission. Congress has often been guided in the exercise of this power by political considerations alone.

After a Territory has applied for admission into the Union, two different methods have been pursued to complete the proc-

ess. (1) Congress has passed an "enabling act"; the Territory then framed a constitution, which was submitted to Congress for approval. (2) The Territory has frequently taken the first step by electing a convention which framed a constitution; with this in hand, the Territory then applied to Congress for admission. In either case, before giving its approval to the admission of a State, Congress must see that the constitution submitted contains nothing that is inconsistent with a republican form of government. (See p. 272.) In addition, Congress has sometimes required the Territory to conform to certain conditions respecting boundaries, lands, and other matters.

Methods of admitting States.

The "territory and other property belonging to the United States" (see p. 274) includes more than the governmental divisions called "Territories" and "possessions." The United States owns vast tracts of land that are situated not only in these Territories but also in many of the States. This land is regarded as property or public domain, and its disposition falls within the power of Congress under the clause a part of which has just been quoted.

Western cessions.

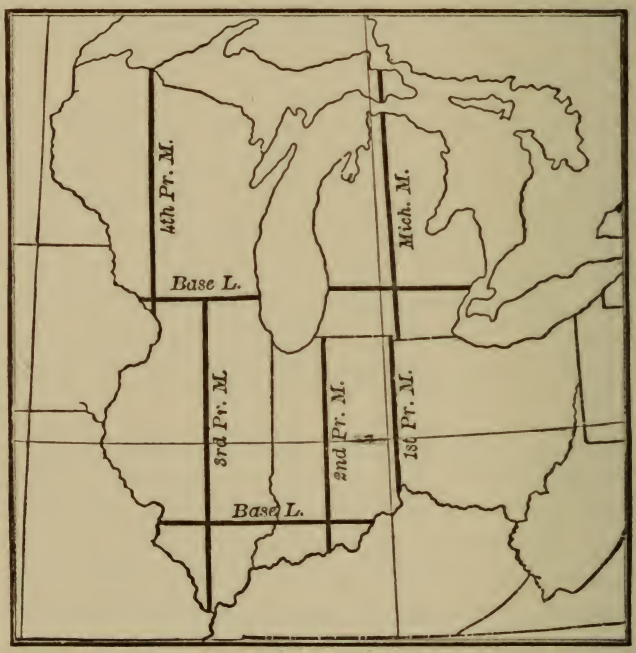
In the years following the adoption of the Constitution, North Carolina, South Carolina, and Georgia followed the example of the Northern States and ceded to the general government their claims upon territory extending westward to the Mississippi River. This was the region where the States of Tennessee, Alabama, and Mississippi have since been formed. As the United States came into possession of the western territory, all unoccupied lands * (except certain portions reserved by the original States for their own use) became the property of the National government. The same is true of all unoccupied lands in the Louisiana purchase and in all subsequent acquisitions of territory. So that the United States has become the possessor of many millions of acres. Its

* By this is meant lands not then in the possession of Europeans. The Indian claim to the lands was partially recognized by the government; it acquired full title from the different tribes by purchase or by conquest. See American History, 100, 308, 473–474.

policy in dealing with this vast property has been of the greatest consequence in our history.

Government survey.

In the thirteen original States there was no uniform system of land survey, but each tract of land was surveyed as necessity required, generally after settlement had been made upon it. The tracts were of very irregu-

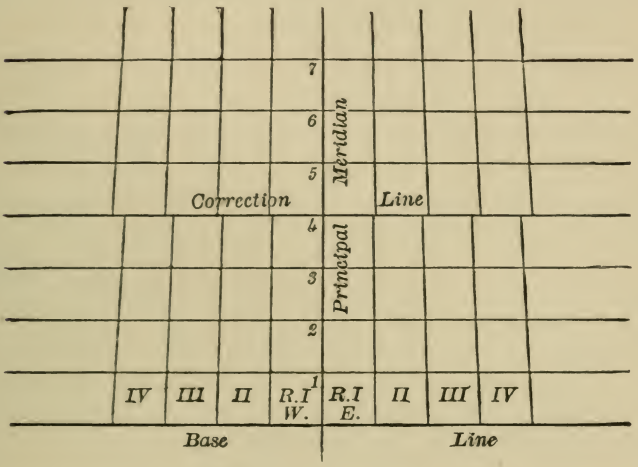


lar shapes. The boundary lines, usually starting from some natural object, were measured by rods or chains, running in certain directions as ascertained by the use of the compass. This method of survey is still in use in the Eastern States. According to a law of 1785, a uniform system of "rectangular" survey was applied to all lands belonging to the United States.* This survey has preceded settlers and has to some extent influenced the meth-

* American History, 188.

od of settlement and the nature of local government throughout the West. The lands surveyed have been divided into townships six miles square. For the boundaries of townships the law requires the use of north-and-south and east-and-west lines. To secure starting points from

FIGURE 1.



which to run these lines, it was necessary to designate certain meridians as Principal Meridians and certain parallels as Base Lines.

The map indicates the location of Principal Meridians and Base Lines in the States north of the Ohio River. Starting, then, from any Principal Meridian, the tier of townships directly east is called Range I; the other ranges are numbered east and west of that Meridian. Counting also from the Base Line, the townships are numbered 1, 2, 3, etc., both north and south. It thus becomes possible to locate precisely any particular township by a simple description: *e. g.*, township 5 north, Range VII east of the first Principal Meridian.

The convergence of meridians causes the townships to

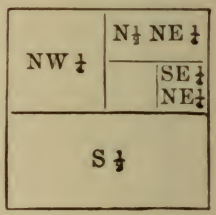
become less than six miles wide from east to west as the survey proceeds northward from any Base Line. This necessitates the running of standard parallel lines, or correction lines, at frequent intervals to be used as new Base Lines.

To still further facilitate the sale and description of lands the law provides for exact methods of subdividing

FIGURE 2.—SIX MILES SQUARE.

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

FIGURE 3.—ONE MILE SQUARE.



the township into sections, one mile square, numbered as in Figure 2.

Each section is subdivided into rectangular tracts known as halves, quarters, half-quarters and quarter-quarters. The designations of these divisions are by abbreviations and fractions. (See Figure 3.) The number of acres in each tract is easily computed.

The rectangular system of survey has been a great aid in the subdivision and location of farm lands; it greatly reduces the number of boundary disputes; it determines very largely the location of country roads. Moreover, the Congressional township has become, in a great many instances, the area within which the political township or

town has been organized. This town, however, need not coincide with the Congressional township; it may be greater or smaller in area.

Land grants made to States.

Upon the admission of Territories into the Union, the ownership of the public lands does not pass to the new States, but remains with the National government. The States cannot interfere with the disposal of this land, nor can they tax it. On the other hand, the National government has pursued a most liberal policy in making grants of land, in large tracts, to the States for various purposes. This is the way in which the school lands of the States were acquired. (See pages 81–82.) Swamp and saline lands, besides other tracts, have been freely given to States to aid in the construction of roads, canals, and other public improvements.

The sale of public lands.

But the largest part of the Nation's domain has been retained and sold or given away by the government to land companies, railroad companies, and settlers. At present, land may be obtained through the General Land Office (Department of the Interior) either by direct purchase or under the homestead laws.

Before 1820, the minimum price of land was $2.00 per acre; the price was then reduced to $1.25. Some lands may still be purchased at that rate, while others are held at $2.50 per acre. The public domain of the United States open to settlement comprises (1910) 711,986,409 acres. This does not include lands located in Alaska, and in our new insular possessions. The greatest part of these lands are situated in the Rocky Mountain and Pacific Coast States and Territories; a large share are arid and can be brought under cultivation only by irrigation, if at all.

The homestead law.

Under the homestead law, "any citizen of the United States, or any person who has declared his intention of becoming such, who is the head of a family, or has attained his majority, or has served in the army or navy in time of war, and is not already the proprietor of more than 160 acres of land in any State or Territory, is entitled to enter a quarter section (160 acres), or any less amount of unappropriated public land, and may acquire

title thereto by establishing and maintaining residence thereon, and improving and cultivating the land for a period of five years."*

Railroad land grants.

Many of the Western railroads (notably the Northern Pacific, Union and Central Pacific, and Southern Pacific) have been given immense tracts of land, amounting in the total to more than 150,000,000 acres. These grants consist of alternate sections lying within wide strips that cross the western part of the country, along the lines of the several railroads. A considerable part of their land has been sold by the railroad companies to actual settlers.

Arid lands.

A large part of the public domain is arid. In 1902, Congress enacted a law providing that the proceeds from the sales of public lands in certain States and Territories should be expended by the National Government in the construction of irrigation works. The establishment of this policy marks an era in the development of our Western States. Under this law great irrigation dams, reservoirs, and canals have been constructed and large areas of public land are being made cultivable and are being sold to settlers. Some of the States are following the same policy, while others are draining swamp lands.

Various reservations.

Many large tracts of land have been retained by the general government as reservations; these are not open to settlement. The forest reserves are intended as a protection for the sources of great rivers. Several National parks (including the Yellowstone and the Yosemite) preserve, for the common good of all, regions of great scenic beauty and scientific interest. Reservoir sites have been reserved in several localities, with a view to the establishment of future irrigation systems. Great tracts of land, located in many States, are preserved as Indian reservations. Military reservations comprise the tracts lying adjacent to Western military posts.

Checking the waste of natural resources.

The policy of our Government in granting and selling its public lands has greatly aided Western settlement, but it has been accompanied by enormous waste and much fraud. Individuals and corporations have acquired large tracts and have held them for speculative purposes. Moreover, little attention was paid until recent years to the other resources of the land besides the soil—timber,

* American History, 389, 441.

minerals, and water-power sites. Great tracts of forests have been destroyed by fire, timber has been wastefully cut, and other large tracts have come into private hands, while the supply of timber in the country is rapidly diminishing. Hence Congress has begun the policy of setting aside forest reservations. These not only conserve the timber, but also help to regulate the flow of rivers. Thus the the washing of soil from hill-sides is checked.

Mineral deposits on public lands are no longer to be sold at low prices with the land. Such land may be withdrawn from entry, and the deposits may later be leased to individuals for working upon the payment of a royalty to the Government. Water-power sites are also being withdrawn from sale, and the Government should in the future prevent their falling permanently into private hands; for the gradual exhaustion of our coal supply will render water-powers of increasing value.

The policy of conservation.

The fundamental principles involved in the policy of conservation * are two: (1) The people should derive just compensation for the sale of the public natural resources, and they should retain ownership of such as may become monopolies; (2) it is the duty of the present generation to care for the welfare of future generations by conserving, rather than allowing the waste of these natural resources.

The Governors' Conference.

The conservation movement was given impetus by President Roosevelt when he called the Conference of Governors, which met first in 1908 and again in 1910. The continuance of these meetings may result in their having great influence over State and National affairs; and so they may become in reality a part of our government, though entirely outside the authority of law or Constitution.

* For facts concerning the activity of States in this direction, see p. 88. See, also, American History, 523.

Supplementary Questions and References

1. What were the circumstances under which the Northwestern States ceded their lands? Hart, Formation of the Union, 107–109; Fiske, Critical Period, 187–199; Hinsdale, Old Northwest, chapters 11–14.

2. What were the admirable features of the Ordinance of 1787? Walker, 39–40; Fiske, Critical Period, 203–207; Hinsdale, Old Northwest, chapters 15–16. The Ordinance itself is found in Old South Leaflets, No. 13.

3. By which method is the land of your State surveyed? Obtain the surveyor's description of a piece of land in your locality. What States do not have the United States survey? Why not? Are there reservations in your State? The map published by the General Land Office shows, in detail, Principal Meridians, Base Lines, land offices, and reservations.

4. Wanted: A government for Alaska. Outlook, 94 : 431–440.

5. The first Filipino assembly and its work. N. Am. Rev., 188 : 521–525; Outlook, 88 : 175–179.

6. The present government and the future of the Philippines. World's Work, 16 : 10655–10656; Outlook, 90 : 450–456; 91 : 75–82.

7. Preparing the Moros for government. Atl. Mo., 97 : 385–394.

8. Fortifying Panama Canal. Rev. of R's, 39 : 732–733.

9. What is the matter with our land laws? Atl. Mo., 102 : 1–9.

10. National irrigation projects. Indept., 62 : 1079–1085; 64 : 1172–1178; Rev. of R's, 37 : 689–698.

11. Uncle Sam's wood lot. Indept., 64 : 1374–1377; Forest Reserves, *ibid.*, 60 : 667–671; Timber Frauds, World's Work, 15 : 9588–9593; National Forestry, *ibid.*, 15 : 9739–9757.

12. Conservation. Atl. Mo., 101 : 694–704; Indept., 64 : 946–952; Outlook, 87 : 291–294; 93 : 770–772; Rev. of R's, 37 : 585–592; 39 : 317–321.

13. Government control of water power. Outlook, 88 : 582–

584; Rev. of R's, 41 : 47–48; Public Coal lands, Rev. of R's, 35 : 303–304.

14. The Governors' Conference. Indept., 64 : 1374–1377.

15. Relations with Cuba. American History, 503–504.

16. What, if any, organized Territories exist on the continent? What were the last Territories to be made States?

CHAPTER XXIX

AMENDMENTS TO THE CONSTITUTION

As already noted, it was practically impossible to amend the Articles of Confederation. The conviction was general, therefore, in the Constitutional Convention that some plan should be adopted by which the Constitution might be made to conform to the requirements of future conditions, as well as guard against changes too easily secured. Article V provides for amendments as follows:

Article V.

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided . . . that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

Methods of proposing amendments.

Amendments to the Constitution may thus be proposed in two ways: by a vote of two-thirds of both houses or by a National convention called by Congress for that purpose on the application of two-thirds of the State legislatures. The convention method has never been used in proposing amendments to the Constitution.

Ratification of amendments.

Amendments may also be ratified by either of two methods: by the legislatures in three-fourths of the several States, or by conventions in three-fourths thereof. When

Congress has proposed an amendment, it has designated that the ratification should be by the State legislatures. The method used in proposing and in adopting amendments seems the best, for the bodies called upon to act may be easily summoned.

Permanent feature of the Constitution.

The most permanent part of the Constitution was secured through the provision that "no State, without its consent, shall be deprived of its equal suffrage in the Senate."

Bill of Rights.

One of the chief arguments against the Constitution was that it did not contain a Bill of Rights, and consequently it was asserted that the rights of the individual citizen could not be maintained. As already noted (p. 116), some of the States were induced to ratify the Constitution, even with this omission, providing they were given the privilege of recommending amendments. One hundred and eighty-nine propositions in the nature of amendments, many of them being repetitions, were presented by the various States to the first Congress. Seventeen amendments, largely selected from these, were proposed by the House of Representatives. Twelve were agreed to by the Senate and ten were ratified by three-fourths of the State legislatures. The first ten amendments are frequently referred to, therefore, as "The Bill of Rights."

Number of amendments.

More than 1,700 amendments to the Constitution have been proposed in an official way. Nineteen of these have been presented to the State legislatures for ratification and fifteen only have received the requisite three-fourths vote. These amendments have now the same force as the original Constitution.

Amendment I. Freedom of religion, of speech, and of assembly.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The religious intolerance characteristic of the colonies and the presence of so many different sects doubtless led to this decree, by which the National government should be forever free from the disturbances which would follow should Congress have been given the right to set up a National religion. Our government, unlike that of many European nations, grants the greatest liberties, provided it can be shown that what was said or published was true and the facts were made known with good motives and for justifiable ends. After many contests in English history, the "right of petition" was finally assured in the Declaration of Rights of 1688. The principle was reasserted in many of the State constitutions, and, although inherent in a republican form of government, it was thought desirable to establish the right by making it a part of the Constitution.

Amendment II. Right of keeping militia.

A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

The necessity for having a militia has been referred to on page 202. Fear of a monarch was genuine, and it was believed that the militia would form a ready defence against any usurpation of power on the part of the President.

Amendment III. Quartering of soldiers.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

The English authorities maintained the right of "billeting soldiers" upon the colonists in time of peace, and this grievance was one of the causes of the American Revolution. It was maintained that "a man's house is his castle," and that he was justified in resisting all intrusions of this nature.

Amendment IV. General warrants.

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

This Amendment, like the preceding, grew out of the desire to check any tendency on the part of the government to trample on the rights of personal liberty and private property. It was believed that the English authorities had disregarded these rights when they issued and strove to enforce the carrying out of the obnoxious Writs of Assistance.*

Amendment IX. Rights retained by the people.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Many clauses of the Constitution have in them an enumeration of certain personal rights retained by the people. Among these rights are the privileges of the writ of *habeas corpus* and of the right of trial by jury. Since all personal rights could not be thus enumerated, Amendment IX was evidently intended to apply to those not so designated.

Amendment X. Powers reserved to the States.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

A motion was made when this Amendment was being discussed in Congress that the words "expressly delegated" be used. It was made to appear in the discussion that the Amendment, as given, was intended as an interpretation of the Constitution, and that, since it was impracticable to enumerate *all* of the powers of the general government, some must of necessity be implied. (See pp. 204–205.)†

The Emancipation Proclamation granted freedom to all the slaves in the States then in rebellion. Delaware, Kentucky, Tennessee, Missouri, Maryland, and parts of Virginia and Louisiana do not appear in this list. Slaves

* Amendments V, VI, VII, and VIII have been discussed under the Judiciary, on pp. 266–267.

†Amendment XI has been taken up under the Judiciary, pp.264–265; Amendment XII has been considered in connection with the election of President and Vice-President, pp. 222–223.

were held in these States, and slavery still had a legal right to exist in them. Congress desired to settle the question, and February 1, 1865, proposed the XIIIth Amendment to the Constitution.

Amendment XIII, section 1. *Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.*

Section 2. *Congress shall have power to enforce this Article by appropriate legislation.*

The wording of the Amendment is almost the same as that which pertains to slavery in the Ordinance for the Northwest Territory of 1787 and the Wilmot Proviso. After it was ratified by sixteen free States and eleven of the former slave-holding States, the requisite three-fourths, Mr. Seward, then Secretary of State, declared it to be a part of the Constitution of the United States, December 18, 1865.

Amendment XIV was proposed by Congress, June 16, 1866, as a part of the general plan for Reconstruction. The Southern States were not to be regarded as a part of the Union until they should ratify it.

Amendment XIV, section 1. *All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

The first section has already been partially discussed on page 191 under the question, Who are citizens?

The "privileges or immunities" of the section doubtless refer to the rights of the freedmen which had been defined by the Civil Rights Act of April 9, 1866. By

this act, the "freedmen were to have the same rights in every State and Territory of the United States to make and enforce contracts; to sue, be parties, and give evidence; to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens and to be subject to the like punishments, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom to the contrary notwithstanding." The right to vote is not enumerated, for it is a political right.

Privileges or immunities of citizens. Story, Commentaries, § 1935.

It was feared attempts would be made in some of the States to keep the negro in a condition of dependence through adverse legislation. To prevent this, the provision was made that no State should deprive "any person of life, liberty, or property without due process of law." The phrase "due process of law," has been regarded, in its legal effects, as equivalent to "the law of the land" which was defined by Webster in the Dartmouth College case as follows: "By the law of the land is most clearly intended the general law; a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. The meaning is, that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society." *

Due process of law. Story, Commentaries, §§ 1940–1944. Dartmouth College *v.* Woodward, 4 Wheaton 519.

Congress believed that the leaders of the South in the Civil War should be deprived of some of their political privileges, and so framed section 3:

Amendment XIV, section 3.

No person shall be a Senator or Representative in Congress, or Elector of President and Vice-President, or hold any office, civil or military, under the United States, or

* Section 2 has been taken up in connection with the apportionment of Representatives, page 125. Pupils should read the entire Amendments as found in the Constitution. Appendix A.

under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each house, remove such disability.

30 United States Statutes at Large, 432.

Congress has at different times removed the disabilities from certain of these classes. Finally, an act of June 6, 1898, removed the last disability imposed by this section.

It was feared there might be an attempt to repudiate the debt which had been incurred in the suppression of the Rebellion and also to pay the war debt of the seceding States. This led to the embodiment of section 4 as a part of the Amendment:

Amendment XIV, section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Section 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

In order to secure full political rights for the negroes the XVth Amendment was passed as indicated on page 125.

Amendment XV, section 1.

The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.

Section 2.

The Congress shall have power to enforce this article by appropriate legislation.

Supplementary Questions and References

1. What facts can be given showing the difficulty of amending the Articles of Confederation? Fiske, Critical Period, 218–220.

2. Is it now considered difficult to amend the Constitution? Bryce, American Commonwealth, I, 368–371.

3. Was the adoption of the XVth Amendment a wise policy?

CHAPTER XXX

THE RELATIONS OF STATES AND NATION

We have now studied in succession the local, State, and National governments of our country. Since the local units are subordinate to the States of which they are divisions, there remain to be considered the relations that exist between the State and National systems.

A Federal Republic.

We should first observe that the States are not mere administrative divisions of the Nation. They do not stand in the same relation to the Nation that counties bear to a State. They do not derive their powers from the National government, nor, on the other hand, does the latter derive its power from the States. The source of power for both is the same—"the people themselves, as an organized body politic." * The United States is, then, a *Federal Republic*. This is very different, on the one hand, from a confederation, such as existed in this country between 1781 and 1789, and, on the other hand, from a centralized republic, such as exists to-day in France. In the former case, the National government rested upon the States and could exercise its most important powers only through them. In France, the "departments" (which may be compared to our States) are merely local administrative divisions of the nation, and possess no original powers of government. Our Federal Republic is more complex than either of these systems; but in efficiency it far excels the Confederacy, and in its adaptation to the circumstances of the people it is infinitely better than a centralized government would be.

* Cooley, Constitutional Limitations, 205.

The division of powers between State governments and the National government.

The peculiarity of our government lies in the division of powers between State and National authorities. Historically, and from a legal point of view, we should first think of all governmental powers as originating in the people. Of these powers,

(1) Some are exercised by State authorities.

(2) Others are delegated to the National government.

The powers belonging to the first group are nowhere enumerated, because it is neither necessary nor possible to anticipate all of them. They are the *reserved powers* mentioned in the Tenth Amendment to the United States Constitution. The powers of the second group are enumerated in the Constitution; they are vested in the legislative, executive, and judicial branches of the National government. We see, then, that local self-government is preserved in the States for State purposes; and that the National government was created to fulfill National purposes, by a direct grant of power from the people.

In determining this division of powers, it becomes necessary to make two other groups:

(3) Some specific powers are denied to the United States.*

(4) Others are denied to the States.†

Some of these prohibitions are necessary in order that the parts of our double system of government may work harmoniously. Evidently, too, the people intend that some powers shall not be exercised by either State or National authorities, since they are denied to both. In this way, certain ancient liberties are preserved.

(5) Finally, there is a group called *concurrent powers*, because they may be exercised by both State and National governments.

We have spoken as though there were two govern-

* See Article I, section 9, and Amendments I–VIII and XI.

† See Article I, section 10, and Amendments XIII–XV.

But one government.

ments, but in reality there is but one. Its parts (State and National) are distinct but not separate.* They fit into and harmonize with each other. Each is necessary to the existence of the other. In the analysis of our government from a legal point of view, we examine them separately; but in the bestowal of our patriotic allegiance as citizens no such separation is possible.

Such is the theory of our government. Its practical workings are not so simple, for very often the line of division between State and Federal powers is doubtful. In tracing this line, the courts have constantly had in view that clause of the Constitution which says:

Article VI, clause 2.

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

National sovereignty.

The doctrine of National sovereignty (*i. e.*, the supreme authority of the National government over every State and every individual) became fully established, subject to dispute from no authoritative source whatever, only after the Civil War and the events that followed. But this doctrine is to be viewed in the light of a larger fact, *viz.*, that the National government possesses only delegated powers, and it is only within the sphere of these powers that the National authority is supreme. "When a particular power is found to belong to the States, they are entitled to the same complete independence in its exercise as is the National government in wielding its own authority. Each within its sphere has sovereign powers." †

We have seen that it is the duty of the courts to de-

* Wilson, The State, 480–483.

† Cooley, Principles of Constitutional Law, 34.

termine, when cases come before them, the limits of State and National jurisdiction. In the last resort, the Supreme Court of the United States decides whether any act of either government is Constitutional. The National government is, therefore, the final judge of the extent of its own powers, as well as of State powers when State and National authority seem to conflict. During most of our history the doctrine was held by eminent persons that, in the event of such a conflict, a State might legally decide for itself which authority should prevail. The doctrine of "State sovereignty" was enunciated in the Virginia Resolutions of 1798 by Madison; in the Kentucky Resolutions of the same year by Jefferson, and in the Resolutions of the Hartford Convention (1814). The doctrine found its logical conclusion in the nullification of a Federal law by South Carolina in 1832. Carried to its extreme limits, State sovereignty became the grounds of justification for the secession of the Southern States at the opening of the Civil War. The doctrine received its death-blow in the events of that period. The success of the National idea seemed for a time to endanger the preservation of the true theory of our government, by threatening the complete dominance of National over State authority. But the Supreme Court of the United States is guardian of State and National powers alike, and its decisions have held firmly to the lines of division that have been indicated in the preceding discussion.

State sovereignty.

As a further statement of this division, it may be said that the States are presumed to have jurisdiction over all subjects of legislation, except as their powers are limited (1) by the National Constitution, (2) by the State constitutions. The National government, on the other hand, is presumed to have only such powers as are delegated to it (either specifically or by implication) in the Constitution of the United States.

At its foundation, that double system which we call "the government of the United States" rests upon the people. They have not finally determined its character, but have reserved the right to modify its form by the process of amendment, and to change its policy by the periodical election of officers.

Supplementary Questions and References

1. The government of France is described in Wilson, The State, 214–223.

2. Switzerland is also a republic; what are the main features of its government? Wilson, 305–333.

3. What are some of the most important among the reserved powers of the States? How are similar powers exercised in England? Wilson, 487–488.

4. Make lists of powers (1) delegated to the National government; (2) denied to it; (3) prohibited to the States; and (4) to both. (5) What powers would you classify as concurrent?

5. Is it accurate to say that the National government has "more powers" than the States? That it is "stronger" than the States?

6. What is the English Constitution? Bryce, I, 241–242. Why may an act of Parliament be unconstitutional and yet valid? Bryce, I, 250–251.

7. Can you mention State and National laws that have been declared unconstitutional by the Supreme Court?

CHAPTER XXXI

SOME FEATURES OF INTERNATIONAL LAW AND ARBITRATION

We have considered some of the ways in which our government is brought into direct relations with foreign powers, such as the postal system, naturalization, and privateering. It is especially to be noted that during the nineteenth century there was a marked advance toward the settlement of controversies between nations according to the principles of international law and through courts of arbitration. It will be of interest, therefore, to consider a few of the leading principles which have tended to prevent wars and lessen the suffering and destruction incident to warfare, and to note the relation of the United States to these forward movements.

Nature and origin of international law.

According to the definition given on page 199, international law refers to the usages which have been established between civilized nations, but more narrowly interpreted it pertains to that body of rules which are accepted by the six great European powers and the United States. Strictly speaking, Hugo Grotius, a political exile from Holland, residing in Paris, became the founder of international law through the publication, in 1625, of his "De Jure Belli ac Pactis," a book which has been declared to have altered the history of the world. "Additions have been made to this great work slowly and imperceptibly as the public opinion of the civilized world decides new cases or grows to greater heights of humanity and justice." *

* Lawrence, The Principles of International Law, 54.

Paris Congress, 1856.

Some of the most difficult international problems have arisen over the attempts to define the rights of neutral nations, especially on the high seas, and the treatment of merchant ships and other private property during the time of war. National usage varied until the year 1856, when the great nations (the United States and Spain excepted), in the Congress at Paris, gave the chief impulse to united action by agreeing to the four significant principles: (1) Privateering is and remains abolished; (2) The neutral flag covers an enemy's goods, with the exception of contraband of war; *i.e.*, One of the belligerent nations cannot seize from a vessel that flies the flag of a neutral country, goods that belong to a citizen of the other belligerent unless they be contraband of war. (3) Neutral goods with the exception of contraband of war are not liable to capture under the enemy's flag; (4) Blockades in order to be binding must be effective.

The United States and the Rule of 1856.

By the year 1861 forty-six sovereign States had agreed to accept these principles. The United States government asserted that *all private property at sea* should be exempt from capture and confiscation, except in the cases of the violation of a blockade and contraband of war, and refused, in consequence, to sanction the Paris Declaration. In treaties made with individual nations, however, the United States accepted these principles and, in 1898, on the occasion of the outbreak of the Spanish-American War, our government issued decrees upon the subjects mentioned below.

Contraband of war.

(1) No privateers were to be allowed. (See page 200.) (2) The blockade of the forts on the coasts of Cuba should be made effective. (3) Contraband of war was to be carefully defined. The articles declared to be absolutely contraband were: "Ordnance, machine-guns and their appliances and the parts thereof; armor plate and whatever pertains to the offensive and defensive armament of naval vessels; arms and instruments of

iron, steel, brass, or copper, or any other material, such arms and instruments being especially adapted for use in war by land or sea; torpedoes and their appurtenances; cases for mines, of whatever material; engineering and transport materials, such as gun-carriages, caissons, cartridge-boxes, campaigning forges, canteens, pontoons; ordnance stores; portable range-finders; signal flags destined for naval use; ammunition and explosives of all kinds; machinery for the manufacture of rams and munitions of war; saltpetre, military accoutrements and equipments of all sorts; horses." The "conditionally contraband" articles mentioned were the following: "Coal when destined for a naval station, a port of call, or a ship or ships of the enemy; materials for the construction of railroads and telegraphs, and money, when such material or money are destined for an enemy's forces; provisions when destined for an enemy's ship or ships, or for a place that is besieged."

Spain declared that the last three articles of the Declaration of Paris were to be enforced, but maintained the right, as already indicated, to grant letters of marque to privateers.

The Geneva Convention, 1864, Red Cross.

In the International Convention, at Geneva, in 1864, another marked advance was made. By this agreement, which has been accepted by nearly all the civilized powers of the world, hospitals and all articles intended for the use of the sick and wounded, together with all surgeons, nurses, and other persons engaged in caring for them, are not subject to capture if they are protected by the badge having a red cross upon a white ground. This emblem is placed on the flag or is worn on the arm as the case may be.

The Brussels Conference, 1874.

From the time of Grotius, appeals were made by individuals and congresses for the lessening of the grosser severities of warfare, but these ideas were not put into practical form until the year 1863. President Lincoln, in that year, decreed that the armies of the United States should be governed by the code of rules which had been prepared on the request of Mr. Lincoln by Francis Lieber. A similar manual was afterward adopted by the various European powers and the general principles were adopted as an international code by the Brussels Conference of 1874, in which the leading States of Europe were represented.

International Arbitration

International Arbitration signifies the agreement on the part of two nations in dispute to submit their differences to an independent tribunal and abide by its decision. Great progress was made during the nineteenth century toward this much-desired goal. Our own government has hastened this advance, for it has been a party to about fifty out of one hundred and twenty arbitrations. Questions settled in this manner, such as boundary, damages inflicted by war or civil disturbances, and injuries to commerce, would formerly have led to war. Twenty of these cases have been between the United States and Great Britain, and a settlement was effected when, at times, it seemed as if war could not be averted. Among others may be mentioned the Alabama Question, which was decided by the Geneva Conference in 1871,* and the Behring Sea Seal Fisheries Question, which was finally settled by a tribunal at Paris in 1893.†

The Hague Conference, 1899.

The work of The Hague Peace Conference, which met May 18, 1899, constituted a fitting close to the efforts which were put forth during the century to bring about conciliation through arbitration. The Conference assembled in response to an invitation issued by the Czar of Russia "on behalf of disarmament and the permanent peace of the world." One hundred and ten delegates were present, representing twenty-six different powers, of which the United States was one. The delegates were divided into three commissions, each having separate subjects for consideration.

Disarmament.

(1) The first commission adopted unanimously the resolution that "the limitation of the military charges which

* See American History, pp. 438, 439.

† The Venezuela question was likewise important. See American History, pp. 486–488.

so oppress the world is greatly to be desired," but agreed that this could not now be accomplished through an international compact.

Rules of Wars.

(2) In the second commission a revision of the Declaration of Brussels concerning the rules of war was made. It was agreed by the entire Conference that a new Convention for this purpose should be called, and that the protection offered by the red cross as agreed upon in the Geneva Convention should also be extended to naval warfare.

International Court of Arbitration.

(3) The proposition expressing the desire that international conflicts might in the future be settled through arbitration was considered by the third commission. Said the late ex-President Harrison: "The greatest achievement of The Hague Conference was the establishment of an absolutely impartial judicial tribunal." Some of the leading features of this permanent Court of Arbitration were provided for as follows: (1) Each nation which agreed to the proposition was to appoint, within three months, four persons of recognized competency in international law, who were to serve for six years as members of the International Court. (2) An International Bureau was established at The Hague for the purpose of carrying on all intercourse between the signatory Powers relative to the meetings of the Court, and to serve also as the recording office for the Court. (3) Nations in dispute may select from the list of names appointed as above, and submitted to them by the Bureau, those persons whom they desire to act as arbitrators. (4) The meetings of the Court are to be held at The Hague, unless some other place is stipulated by the nations in the controversy. This Court was convened for the first time May, 18, 1901, and the first case submitted was one between the United States and Mexico. It is readily seen that the advantages of such a court are that unprejudiced arbitrators

are selected; rules of procedure are defined; and that decisions rendered are more liable to be accepted in future cases, and thus a code will be formed. So many cases have been submitted to this tribunal and satisfactorily disposed of that it has been said that a government which will not now try arbitration before resorting to arms, is no longer considered respectable. In 1910, provision was made for a permanent home for the court through the gift of $1,500,000 by Andrew Carnegie.

The second Hague Conference, 1907.

In 1904, President Roosevelt proposed a second Hague conference to the nations which had taken part in the first one. Russia, then at war with Japan, objected, but when peace was restored Emperor Nicholas II issued an invitation to fifty-three nations to send representatives to such a conference. Delegates from forty-five of these nations responded by sending delegates to The Hague in the summer of 1907. Among the positive results of the conference were; (1) The declaration was adopted prohibiting the throwing of projectiles and explosives from balloons; (2) Provision was made for an international prize court to which appeal might be made from the prize courts of the belligerent powers; and (3) Agreement upon certain principles relating to the laws and customs of war. While no definite position was taken relating to military and naval expenditures, this problem was referred to the respective governments for "serious study." Belief was reasserted in the obligatory arbitration of all questions relating to treaties and international problems of a legal nature, but the principle was not adopted although thirty-two powers favored it. It was recommended that another conference should be called after an interval of eight years.

Other peace movements.

Many societies are now organized for the purpose of bringing about disarmament and the settlement of all international disputes through arbitration. Individuals have contributed large sums of money toward the move-

ment for universal peace. With this object in view, Mr. Carnegie, in 1910, created a fund of $10,000,000.

Suggestive Questions and References

1. The Peace Conference at The Hague, 1899, N. A. Rev., 168 : 771–778; 169 : 604–624; 625–639; N. Eng. Mag., 19 : 580–585; Forum, 28 : 1–12; Outlook, 62 : 22–25; Reasons for Russia's Desire for Peace, Rev. of R's, 18 : 376–377; 19 : 432–434.

2. The text of the arbitration agreement made at The Hague Conference is found in Rev. of R's, 21 : 51–55; Moore, What the Arbitration Treaty is Not, Rev. of R's, 21 : 50–51.

3. What was the arbitration treaty negotiated with England in 1897? Forum, 23 : 13–27; Outlook, 55 : 223–224; Fiske, Atl. Mo., 79 : 339–408. For what reasons was the treaty rejected by the Senate? Outlook, 55 : 960–961.

4. The Second Hague Conference. Outlook, 86 : 155–159; Rev. of R's, 36 : 529–530; 727; N. Am. Rev., 186 : 576–580.

APPENDIX A

CONSTITUTION

OF THE

UNITED STATES OF AMERICA.

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America

ARTICLE I.

Section I. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.

Sect. II. 1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

2. No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the

United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4. When vacancies happen in the representation from any State, the Executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

Sect. III. 1. The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a President *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SECT. IV. 1. The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECT. V. 1. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two thirds, expel a member.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the journal.

4. Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECT. VI. 1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law and paid out of the treasury of the United States. They shall in all cases except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emolu-

ments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

SECT. VII. 1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and, if approved by two thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECT. VIII. The Congress shall have power

1. To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

2. To borrow money on the credit of the United States;

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

6. To provide for the punishment of counterfeiting the securities and current coin of the United States;

7. To establish post offices and post roads;

8. To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

9. To constitute tribunals inferior to the Supreme Court;

10. To define and punish piracies and felonies committed on the high seas and offences against the law of nations;

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

13. To provide and maintain a navy;

14. To make rules for the government and regulation of the land and naval forces;

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

16. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State, in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings;—and

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or office thereof.

Sect. IX. 1. The migration or importation of such persons as any of the States now existing shall think proper to admit shall not be prohibited by the Congress prior to the year 1808; but a tax or duty may be imposed on such importation, not exceeding $10 for each person.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

3. No bill of attainder or *ex post facto* law shall be passed.

4. No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

5. No tax or duty shall be laid on articles exported from any State.

6. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another: nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

7. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

8. No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Sect. X. 1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

3. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION I. 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice-President, chosen for the same term, be elected as follows:

2. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.]

3. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

4. No person except a natural born citizen, or a citizen of the

United States, at the time of the adoption of this Constitution, shall be eligible to the office of President ; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

5. In case of the removal of the President from office or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

6. The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

7. Before he enter on the execution of his office, he shall take the following oath or affirmation :—" I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

SECT. II. 1. The President shall be commander in chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States ; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law : but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Sect. III. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Sect. IV. The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

Section I. 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Sect. II. 1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made or which shall be made, under their authority; — to all cases affecting ambassadors, other public ministers and consuls; — to all cases of admiralty jurisdiction; — to controversies to which the United States shall be a party; — to controversies between two or more States; — between a State and citizens of another State; — between citizens of different States; — between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens or subjects.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction,

both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SECT. III. 1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE IV.

SECTION I. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SECT. II. 1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SECT. III. 1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

SECT. IV. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V.

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendments which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several

States, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine States, shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convention by the unanimous consent of the States present, the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty-seven and of the Independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

[Signed by] G° WASHINGTON,
Presidt and Deputy from Virginia.

NEW HAMPSHIRE.
John Langdon,
Nicholas Gilman.

MASSACHUSETTS.
Nathaniel Gorham,
Rufus King.

CONNECTICUT.
Wm. Saml. Johnson,
Roger Sherman.

NEW YORK.
Alexander Hamilton.

NEW JERSEY.
Wil: Livingston,
David Brearley,
Wm: Paterson,
Jona: Dayton.

PENNSYLVANIA.
B Franklin,
Thomas Mifflin,
Robt. Morris,
Geo. Clymer,
Tho. Fitz Simons,
Jared Ingersoll,
James Wilson,
Gouv Morris.

DELAWARE.
Geo: Read,
Gunning Bedford, Jun,
John Dickinson,
Richard Bassett,
Jaco: Broom.

MARYLAND.
James McHenry,
Dan of St. Thos. Jenifer,
Danl Carroll.

VIRGINIA.
John Blair,
James Madison, Jr.

NORTH CAROLINA.
Wm. Blount,
Richd. Dobbs Spaight.
Hu Williamson.

SOUTH CAROLINA.
J. Rutledge,
Charles Cotesworth Pinckney,
Charles Pinckney,
Pierce Butler.

GEORGIA.
William Fen,
Abr Baldwin.

Attest: William Jackson, *Secretary.*

ARTICLES IN ADDITION TO AND AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES, PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.

ARTICLE I.—Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ; or abridging the freedom of speech, or of the press ; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.—A well-regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

ARTICLE III.—No soldier shall, in time of peace be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.—The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.—No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger ; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb ; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law ; nor shall private property be taken for public use without just compensation.

ARTICLE VI.—In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation ; to be confronted with the witnesses against him ; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

ARTICLE VII.—In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII.—Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.—The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.—The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI.—The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state.

ARTICLE XII.—1. The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate; — the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; — the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall de-

volve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. — The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Article XIII.—Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Article XIV.—Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of Electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or Elector of President and Vice-President, or hold any

office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two thirds of each house, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce by appropriate legislation the provisions of this article.

Article XV.—Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

APPENDIX B

ARTICLES OF CONFEDERATION[1]

Articles of Confederation and Perpetual Union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

ARTICLE I.—The style of this Confederacy shall be, "The United States of America."

ART. II.—Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States in Congress assembled.

ART. III.—The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

ART. IV.—The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and egress to and from any other State, and shall enjoy therein all the privileges of trade and commerce subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively; provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State to any other State of which the owner is an inhabitant; provided also, that no imposition, duties, or restriction shall be laid by any State [illegible] property of

the United States or either of them. If any person guilty of, or charged with, treason, felony, or other high misdemeanor in any State shall flee from justice and be found in any of the United States, he shall, upon demand of the governor or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offense. Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

ART. V.—For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the Legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year. No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States for which he, or another for his benefit, receives any salary, fees, or emolument of any kind. Each State shall maintain its own delegates in any meeting of the States and while they act as members of the Committee of the States. In determining questions in the United States in Congress assembled, each State shall have one vote. Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress; and the members of Congress shall be protected in their persons from arrests and imprisonment during the time of their going to and from, and attendance on, Congress, except for treason, felony, or breach of the peace.

ART. VI.—No State, without the consent of the United States, in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty with any king, prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state; nor shall the United States, in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States, in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties which may interfere with any stipulations in treaties entered into by the United States, in Congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any State, except such number only as shall be deemed necessary by the United States, in Congress assembled, for the defense of such State or its trade, nor shall any body of forces be kept up by any State in time of peace, except such number only as, in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such State; but every State shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use in public stores a due number of field-pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

No State shall engage in any war without the consent of the United States, in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States, in Congress assembled, can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States, in Congress assembled, and then only against the kingdom or state, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States, in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States, in Congress assembled, shall determine otherwise.

ART. VII.—When land forces are raised by any State for the common defense, all officers of or under the rank of Colonel shall

be appointed by the Legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

ART. VIII.—All charges of war, and all other expenses that shall be incurred for the common defense, or general welfare, and allowed by the United States, in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States in proportion to the value of all land within each State, granted to, or surveyed for, any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States, in Congress assembled, shall, from time to time, direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the Legislatures of the several States, within the time agreed upon by the United States, in Congress assembled.

ART. IX.—The United States, in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth Article; of sending and receiving ambassadors; entering into treaties and alliances, provided that no treaty of commerce shall be made, whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatever; of establishing rules for deciding, in all cases, what captures on land and water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated; of granting letters of marque and reprisal in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas; and establishing courts for receiving and determining finally appeals in all cases of captures; provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States, in Congress assembled, shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: Whenever the legislative or executive authority, or lawful agent of any State

in controversy with another, shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which Congress shall judge sufficient, or being present, shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court, to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive; the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned; provided, that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward." Provided, also, that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdictions

as they may respect such lands, and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States, in Congress assembled, shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States; fixing the standard of weights and measures throughout the United States; regulating the trade and managing all affairs with the Indians, not members of any of the States; provided that the legislative right of any State, within its own limits, be not infringed or violated; establishing and regulating post-offices from one State to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office; appointing all officers of the land forces in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States, in Congress assembled, shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated "A Committee of the States," and to consist of one delegate from each State, and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction; to appoint one of their number to preside; provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses; to borrow money or emit bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted; to build and equip a navy; to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white

inhabitants in such State, which requisition shall be binding; and thereupon the Legislature of each State shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States, in Congress assembled; but if the United States, in Congress assembled, shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such State, unless the Legislature of such State shall judge that such extra number can not be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared, and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States, in Congress assembled.

The United States, in Congress assembled, shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same, nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States, in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations as in their judgment require secrecy; and the yeas and nays of the delegates of each State, on

any question, shall be entered on the journal when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said journal except such parts as are above excepted, to lay before the Legislatures of the several States.

ART. X.—The Committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States, in Congress assembled, by the consent of nine States, shall, from time to time, think expedient to vest them with; provided that no power be delegated to the said Committee, for the exercise of which, by the Articles of Confederation, the voice of nine States in the Congress of the United States assembled is requisite.

ART. XI.—Canada, acceding to this Confederation, and joining in the measures of the United States shall be admitted into, and entitled to all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

ART. XII.—All bills of credit emitted, moneys borrowed, and debts contracted by or under the authority of Congress, before the assembling of the United States, in pursuance of the present Confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

ART. XIII.—Every State shall abide by the determinations of the United States, in Congress assembled, on all questions which by this Confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State.

AND WHEREAS it hath pleased the great Governor of the world to incline the hearts of the Legislatures we respectively represent in Congress to approve of, and to authorize us to ratify, the said Articles of Confederation and perpetual Union, know ye, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and

perpetual Union, and all and singular the matters and things therein contained. And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States, in Congress assembled, on all questions which by the said Confederation are submitted to them; and that the Articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual. In witness whereof, we have hereunto set our hands in Congress. Done at Philadelphia, in the State of Pennsylvania, the ninth day of July, in the year of our Lord 1778, and in the third year of the Independence of America.

APPENDIX C

REFERENCE BOOKS

The books named in the lists that follow have been used in the preparation of this volume. Those marked (*) are especially recommended for high schools.

Original Sources

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*Hart, American History Told by Contemporaries. Macmillan.
Elliot, Debates, 5 volumes.
*The Federalist. Scott, Foresman & Co.
*Madison, Journal of the Constitutional Convention. Scott, Foresman & Co.
*Old South Leaflets. Heath.

Publications of the Government Printing Office, Washington

*Abridgment of the President's Message and Accompanying Documents.
Bulletins of the Bureau of American Republics.
*Civil Service Commission, Annual Reports.
*Commissioner of Labor, Annual and Special Reports.
*Commissioner of Education, Annual Reports.
*Congressional Directory.
*Congressional Record.
Consular Reports.
Donaldson, Public Domain.
*Finance Reports. (Secretary of the Treasury.)
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*Manual and Digest of the House of Representatives.
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Hitchcock, American State Constitutions. Putnam.
*Hosmer, Samuel Adams. American Statesmen Series. Houghton, Mifflin & Co.
Howe, Taxation and Taxes in the United States Under the Internal Revenue System. Crowell.
Jenks, The Trust Problem. McClure, Phillips & Co.
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*Magruder, John Marshall. American Statesmen Series. Houghton, Mifflin & Co.
McConachie, Congressional Committees. Crowell.
*McMaster, History of the People of the United States. Appleton.
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*Taussig, Tariff History of the United States. Putnam.
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